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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 U.S. BANK NATIONAL
4 ASSOCIATION,

Interpleader Plaintiff,

5 v.

18 CV 04044 (BCM)

6 TRIAXX ASSET MANAGEMENT, LLC,
7 et al.,

Bench Trial

8 Interpleader Defendants.
9

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10 New York, N.Y.
11 April 20, 2023
9:30 a.m.

Before:

12 HON. BARBARA C. MOSES,

13 U.S. Magistrate Judge

14 APPEARANCES

15 ALSTON & BIRD

Attorneys for Interpleader Plaintiff

16 BY: ALEXANDER LORENZO
ELIZABETH A. BUCKEL
17 SAMANTHA BUI

18 FRIEDMAN KAPLAN SEILER ADELMAN & ROBBINS

Attorneys for Interpleader Defendants Triaxx and Phoenix
19 Real Estate

20 BY: ANNE E. BEAUMONT
PRIYANKA WITYK
21 ANIL K. VASSANJI

22 NORTON ROSE FULBRIGHT

Attorneys for Interpleader Defendant PIMCO

23 BY: SANDEEP SAVLA
ANTHONY LAURIELLO
24 BRANDT VERNON
25

n4k3usb1

APPEARANCES (Continued)

DAVIS POLK & WARDWELL LLP

Attorneys for Interested Party Citigroup Global Markets

BY: ADAM GREENE

ISAAC GELBFISH

WOLLMUTH MAHER & DEUTSCH

Attorneys for Interpleader Defendant Triaxx Prime CDOs

BY: MICHAEL LEDLEY

n4k3usb1

(Trial resumed; case called)

MR. LORENZO: Good morning, your Honor. Alex Lorenzo from Alston & Bird for U.S. Bank National Association as trustee. This morning I'm joined by Ms. Buckel and my colleague Ms. Bui, who will be cross-examining a witness today.

THE COURT: Ms. Bui, is there room for you at counsel table?

MR. LORENZO: We were going to rotate through the day. So I may be back there at one point, your Honor.

THE COURT: Well, if we have some extra chairs, I think there is one over there, you can pull it up.

So that's Mr. Lorenzo, Ms. Buckel, and Ms. Bui for the trustee.

MR. SAVLA: Good morning, your Honor. Sandeep Savla of Norton Rose Fulbright U.S. for PIMCO. I'm joined by my colleague Anthony Lauriello. Later on today a colleague of ours from Dallas, Texas, will be moving some exhibits into evidence I believe.

THE COURT: Okay.

MR. SAVLA: His name is Brandt Vernon. To my left I have the Davis Polk team, Adam Greene and Isaac Gelbfish.

THE COURT: Mr. Savla, Mr. Lauriello, Mr. Greene, and Mr. Gelbfish before me this morning, but Mr. Vernon making a late appearance later today.

MS. BEAUMONT: Good morning, your Honor. Anne

n4k3usb1

1 Beaumont, Friedman Kaplan Seiler Adelman & Robbins for Triaxx
2 Asset Management LLC and Phoenix Real Estate Solutions Ltd.
3 With me are my colleagues Priyanka Wityk and Anil Vassanji.

4 MR. LEDLEY: Michael Ledley, Wollmuth Maher & Deutsch
5 for the issuers, and I appear by myself.

6 THE COURT: You are sufficient unto yourself,
7 Mr. Ledley, and that I believe is it for today.

8 So, Mr. Calamari was not yet done when we broke
9 yesterday afternoon. Is there any business that we need to
10 cover before we invite him back in?

11 MR. LORENZO: So, just further to the discussion at
12 the end of the day yesterday, your Honor. Everyone spoke, and
13 if your Honor's schedule allows, I think the parties were
14 looking at Thursday, I believe it is Thursday, May 25. And I
15 know your Honor mentioned you had some availability, I don't
16 know if there is a particular time.

17 THE COURT: So your preference is to come back and
18 argue in a month on May 25, by which time you will have
19 submitted proposed post-trial findings.

20 MR. LORENZO: Yes, your Honor. The parties were
21 thinking, if it works with your Honor's schedule, that the
22 deadline would be the Friday before, the 19th of May.

23 THE COURT: So, rather than hold things up this
24 morning, let me make a note of that and we'll check our
25 calendar at the lunch break and let you know if that's going to

N4k3usb1

Calamari - Cross

1 work.

2 MR. LORENZO: Good. Thank you.

3 THE COURT: So, where is Mr. Calamari?

4 MS. BEAUMONT: I will go get him.

5 THE COURT: You may step forward, Mr. Calamari. You
6 don't have to be sworn in again. You can take the stand.

7 THE WITNESS: Thank you, your Honor.

8 THE COURT: Mr. Calamari, I will remind you that you
9 are still under oath.

10 Mr. Lorenzo, you may proceed.

11 NICHOLAS CALAMARI,

12 called as a witness by the Defendant,

13 having been previously sworn, testified as follows:

14 CROSS-EXAMINATION

15 BY MR. LORENZO:

16 Q. Good morning, Mr. Calamari. So, before I get started with
17 my questioning, I just wanted to cover two logistical matters.

18 MR. LORENZO: With the Court's permission, I was going
19 to approach. And I know I mentioned we had an inadvertent
20 error and didn't have the signed copy of Exhibit 40, so we have
21 a replacement for tab 5 and an additional tab 17 for your
22 binder.

23 THE COURT: Let me take the tabs. You've distributed
24 them to the other counsel?

25 MR. LORENZO: Yes, your Honor.

N4k3usb1

Calamari - Cross

1 THE COURT: Okay.

2 MR. LORENZO: One is tab 5 and then there is a tab 17.

3 THE COURT: Let me see what I have. So, the new tab 5
4 is marked Exhibit 40 as the old tab 5 was, but is a different
5 version of Exhibit 40.

6 MR. LORENZO: It is a version of Exhibit 40 with
7 Mr. Calamari's signature and there had been a correction on the
8 docket, so the version that was in the binder was the original
9 version that had been submitted, and then there was a
10 correction on the docket when we realized in fact it was the
11 signed version.

12 THE COURT: That you intended all along. What version
13 do I have in those binders down there? And by "those binders
14 down there" I mean the ones you delivered last week.

15 MR. LORENZO: I had that thought, your Honor. I'm
16 fingers crossed hopeful you have the corrected version, but I
17 would be happy to check the a break.

18 THE COURT: Well, so let us make a note to ourselves,
19 Ms. Kay and Ms. Almonte, that the version of Exhibit 40, which
20 was admitted jointly, correct?

21 MR. LORENZO: Yes.

22 THE COURT: The version of Exhibit 40 that we should
23 be looking at is the one we were handed this morning. If our
24 electronic and prior paper copy is different, I guess we'll
25 take care of that on our end.

N4k3usb1

Calamari - Cross

1 Exhibit 17 is new to the binder but not new to the
2 case, is that right?

3 MR. LORENZO: Not new to the case, though I believe as
4 a technical matter this exhibit, which is a Phoenix invoice,
5 has not yet been admitted so I will --

6 THE COURT: It was premarked?

7 MR. LORENZO: It was premarked, yes, your Honor.

8 THE COURT: That's fine. I think I'm caught up
9 logistically.

10 MR. LORENZO: Thank you, your Honor.

11 Q. So, Mr. Calamari, just as a housekeeping matter, if you
12 will look at the new version of Exhibit 40, which again is tab
13 5 in the binder. If you could just flip to the very last page
14 of that document, which has a number 9 at the bottom. I think
15 Tom might not have the newest version.

16 Do you see that heading about halfway down the page
17 that says verification?

18 A. Yes.

19 Q. Below that there is a signature block with your name
20 printed. Do you see that?

21 A. Yes.

22 Q. Is that your signature?

23 A. Yes.

24 Q. So, let's pick up where we left off yesterday and I think I
25 had mentioned I was going to move to a new topic. And that

N4k3usb1

Calamari - Cross

1 topic is the testimony in your declaration about getting legal
2 advice from Mr. Stein.

3 So, when you refer to getting legal advice from
4 Mr. Stein, and again I think this is paragraph 39 of your
5 direct testimony, it's correct that the time frame is early
6 2017, correct?

7 A. Yes.

8 Q. As of early 2017, had any of PRES' monthly fees been paid
9 outside the waterfall?

10 A. I'm not sure specifically off the top of my head, but I
11 believe yes.

12 Q. So, let's look at that. Hopefully you might have open tab
13 5, Exhibit 40 still, but if you could turn to tab 5 and
14 specifically page 4 which is a chart we had looked at yesterday
15 which has a number of entries that I believe you had testified
16 are outside the waterfall payments.

17 A. I'm there.

18 Q. So, if we look about halfway way through the chart, there
19 is a series of entries on October 26, 2015. Do you see that?

20 A. Yes.

21 Q. And the last of those entries, the payee is Phoenix Real
22 Estate Solutions. Do you see that?

23 A. Yes.

24 Q. The amount is \$1,167,994.84. Do you see that?

25 A. Yes.

N4k3usb1

Calamari - Cross

1 Q. And this is an amount that was disbursed from an account
2 controlled by Miller & Wrubel, correct?

3 A. Yes.

4 Q. So, when you mentioned just a moment ago that you thought
5 that monthly fees may have been paid outside the waterfall, was
6 this the payment you were referring to?

7 A. I don't know I was referring to it specifically, but
8 generally it makes sense.

9 Q. So, let's flip the page -- let's flip to tab 6 which is a
10 document that has been marked as Exhibit 3493 which is already
11 in evidence. Have you seen this document before?

12 A. Yes.

13 Q. What is this document?

14 A. This appears to be one of the letters from Mr. Moon to
15 Ms. Martin at Wilmer Hale.

16 Q. This document, this letter from Mr. Moon, this is one of
17 the instructions and the detailed recommendations about
18 payments outside the waterfall?

19 A. I don't know if it was an instruction. But it was a letter
20 to Ms. Martin about payments outside the waterfall, yes.

21 Q. So, let's flip the page, and on page 2 of this letter,
22 there are a series of bullet point items. And just before I
23 get to that, I'll represent to you, in your declaration,
24 paragraph 29, I believe you referred to Exhibit 3052 which is a
25 draft version of this letter. But our understanding, if you

N4k3usb1

Calamari - Cross

1 look to the third page, is this is the final version.

2 A. I understand.

3 Q. So as we look on page 2 of the letter, the second from the
4 bottom bullet point, Mr. Moon writes: "At September 15, 2015,
5 Phoenix RES had a receivable of \$1,167,994.84 for litigation
6 support services to Triaxx."

7 Do you see that?

8 A. Yes.

9 Q. That number lines up exactly with the payment that we were
10 looking at just a moment ago in the previous exhibit, correct?

11 A. Yes.

12 Q. I'm happy to have you flip back and forth if you like.

13 A. If you'd like me to, I can.

14 Q. Okay.

15 A. Yes, the numbers are identical.

16 Q. Then Mr. Moon continues: "The statement of receivables is
17 attached. See attachment B." And then he writes: "The
18 underlying contracts have already been supplied to the
19 directors." And the next sentence: "The outstanding fees are
20 comprised of a monthly diligence fee and a monthly activist
21 implementation fee per CUSIP of RMBS that Phoenix RES analyzed
22 in furtherance of Triaxx's recovery efforts."

23 Do you see that?

24 A. Yes.

25 Q. So, in fact, this one million -- I won't repeat the whole

N4k3usb1

Calamari - Cross

1 number, slightly more than a million dollars that was paid out
2 on October 15 was for Phoenix's monthly fees; is that correct?

3 A. I mean, I would just repeat what was written here.

4 Q. But you have no reason to believe it wasn't Phoenix's
5 monthly fees, correct?

6 A. No, I think it says monthly fees here.

7 Q. So you are in agreement then?

8 A. Yes.

9 Q. If we flip to Bates stamp page, still within this exhibit,
10 22435. That's attachment B which is referenced in that
11 paragraph.

12 A. What number?

13 Q. Sure. 22435 is the Bates stamp.

14 A. 22435 is attachment B.

15 Q. That was referenced in that paragraph that we just read; is
16 that correct?

17 A. Yes.

18 Q. If we flip it over, it appears there is a three page
19 spreadsheet of what we understand to be outstanding amounts
20 due. Do you see that?

21 A. Yes.

22 Q. So, if we look, just taking the first page of this
23 spreadsheet ending in 436, so if we look at the first line, the
24 vendor is PRES, correct?

25 A. Yes.

N4k3usb1

Calamari - Cross

1 Q. The date is 6/15 -- it is 215, but I think it's supposed to
2 be 2015, is that correct?

3 A. If you look at the next column, it confirms that.

4 Q. And this appears to be an invoice from PRES. Is that your
5 understanding?

6 A. Yes.

7 Q. And then --

8 A. I'm sorry. This looks like a breakdown of the -- not the
9 invoice itself. This looks more similar to what would be
10 provided to me by the trustee in their monthly invoicing
11 reports, because it has the amounts of paid and due. So I
12 don't think it is an invoice.

13 Q. Understood. You corrected me because my question wasn't
14 precise. But this is a reference to an invoice, correct?

15 A. Yes.

16 Q. So, you had already gotten ahead of me, but the original
17 amount, your understanding that's the original amount of the
18 invoice, right?

19 A. Column B, yes.

20 Q. Yes. As we look at column F, which is listed as paid, that
21 number there is your understanding, that's the amount that has
22 been paid on that invoice to date?

23 A. Yes.

24 Q. Would that payment have come from inside the waterfall
25 payments?

N4k3usb1

Calamari - Cross

1 A. Most likely.

2 Q. And then if we look at column G, due, is it your
3 understanding that's the amount outstanding, subtracting the
4 original amount, minus the amount that has been paid?

5 A. Yes.

6 Q. So, as of Mr. Moon's letter, which is dated October 26,
7 2015, just looking at that first line, it appears there was
8 still an amount outstanding as reflected in column G of this
9 spreadsheet; is that correct?

10 A. Yes.

11 Q. That's the same as we go through the spreadsheet. It looks
12 like for a number of entries that appear to be invoices, there
13 are amounts outstanding; is that correct?

14 A. Yes.

15 Q. Now, you had mentioned the instruction, so I just want to
16 flip a couple of pages further in this exhibit to Bates stamp
17 2243, which is attachment E.

18 A. 2243 what?

19 Q. Bates stamp 22443. Apologies.

20 A. Yes, I am at the attachment.

21 Q. If you flip it over, is this what you were referring to
22 when you mentioned an instruction?

23 A. I think you referenced an instruction. But, I was
24 referencing that the prior letter was not an instruction, but I
25 would agree this is.

N4k3usb1

Calamari - Cross

1 Q. If we look at the second page of this document, ending in
2 445, there is a signature block with your name. Do you see
3 that?

4 A. Yes.

5 Q. Is that your signature?

6 A. Yes.

7 Q. So, is it your understanding, as we flip back to the
8 spreadsheet at attachment B, which starts on 22436, that the
9 outstanding amounts in column G are Phoenix's monthly invoices
10 were being paid outside the waterfall pursuant to this
11 instruction?

12 A. I'm sorry. I'm a little confused because the instruction
13 is for August 19, 2015, but this letter is October 26, 2015.
14 So can you repeat the question?

15 Q. Sure. Let's look and I'll flip back to the instruction,
16 Bates stamp 22444. It looks like the date you signed it is
17 10/26/2015.

18 A. Oh, yes. Okay. Thank you.

19 Q. If we look on your signature -- the page with your
20 signature, right at the top of that chart, that same 1,167,994
21 figure is right there, right?

22 A. Yes.

23 Q. So is it your understanding that, pursuant to this
24 instruction, the outstanding amounts that are listed in
25 attachment B of Phoenix's monthly invoices were paid?

N4k3usb1

Calamari - Cross

1 A. I think this was the final step of a long process that,
2 yes, after the directors had approved the payments, this was
3 the instruction to Miller Wrubel to carry that out.

4 Q. So, and this is, again, this is October of 2015, correct?

5 A. Yes.

6 Q. So then, shifting time periods, I had initially started
7 this line of questioning asking you about the reference in your
8 declaration to the 2017 time period and reaching out to
9 Mr. Stein. Do you remember that?

10 A. Yes.

11 Q. So as of early 2017, PRES' monthly fees had already been
12 paid outside the waterfall, correct?

13 A. Yes.

14 Q. Now let's look, and I think you still have it up in front
15 of you, a copy of your declaration. Hopefully you have that
16 binder.

17 A. Yes.

18 Q. So, let's turn to paragraph 41 of your declaration.

19 A. Yes.

20 Q. In that paragraph, you testified that Mr. Brunekreef asked
21 for written legal advice about the payment of legal fees
22 outside the waterfall, correct?

23 A. Yes.

24 Q. But in your mind, there was not a need for written legal
25 advice because PRES' monthly fees had already been paid outside

N4k3usb1

Calamari - Cross

1 the waterfall, correct?

2 A. There was a need for written legal advice, because
3 Mr. Brunekreef asked me to do that.

4 Q. Right, but you didn't personally feel that you needed legal
5 advice, right?

6 A. No, I felt like we had already received written legal
7 advice.

8 Q. At the time of Mr. Brunekreef's request, you were also
9 trying to get PRES' monthly invoices paid, correct?

10 A. Yes.

11 Q. And the same with the legal expenses that Mr. Brunekreef
12 was just referencing?

13 A. Yes.

14 Q. Have you worked on other CDO transactions?

15 A. What do you mean by transactions? In the course of my
16 litigation career, I definitely litigated over CDOs. I did not
17 work on them from a business side perspective.

18 Q. What I am trying to get to is whether you have familiarity
19 with CDOs, other than the Triaxx CDOs?

20 A. At one point I would have. Sitting here today, not with
21 any specifics.

22 Q. So, you're familiar that administrative expense caps are
23 quite typical in CDO transactions, correct?

24 A. Yes.

25 Q. But here, in this time period of early 2017, you felt there

N4k3usb1

Calamari - Cross

1 was a need to get around those expense caps, correct?

2 A. I don't know that I would use the term "get around." And I
3 don't know about me. There was an overall feeling that
4 invoices should be paid. And we were looking to the available
5 funds to be able to do that.

6 Q. That was the justification for payments outside the
7 waterfall?

8 A. I think the justification for payments outside of the
9 waterfall involved that as well as the seeking advice from all
10 of the appropriate parties.

11 Q. So, still in this early 2017 time frame that you are
12 talking about in paragraph 41 of your direct testimony,
13 Mr. Brunekreef wants written legal advice. But you don't think
14 it's necessary, correct?

15 A. Again, I don't know that I didn't think it was necessary.
16 Mr. Brunekreef asked me to do something, and I did it.

17 Q. Right. But for Mr. Brunekreef's request, you didn't think
18 you needed written legal advice, correct?

19 A. Mr. Brunekreef initiated the request for legal advice, not
20 me. I agree with that.

21 Q. And then you initially sought advice from a specific
22 attorney at Arnold & Porter; is that correct?

23 A. I don't know if I sought advice, but I reached out to
24 Arnold & Porter to ask.

25 Q. Who was the attorney that you reached out to at Arnold &

N4k3usb1

Calamari - Cross

1 Porter?

2 A. I don't recall the attorney that would have specifically
3 been responsive to this question. My relationship partner
4 there was a gentleman named Henry Morriello.

5 Q. Our understanding from the documents is that the person
6 that you reached out to at Arnold & Porter wasn't available due
7 to some sort of hospitalization; is that correct?

8 A. Yes.

9 Q. So, you then went to Schulte Roth; is that correct?

10 A. Yes.

11 Q. You said that you had a relationship contact at Arnold &
12 Porter. How was Arnold & Porter involved with TAM at that
13 time?

14 A. They were the general corporate counsel to TAM.

15 Q. Were they also serving as TAM's litigation counsel?

16 A. They became its litigation counsel at some point. I don't
17 remember the exact date.

18 Q. Do you think it was around this 2017 time period?

19 A. I believe it would have been whenever the first
20 interpleader was started.

21 Q. So before you went to Schulte, did you try to reach out to
22 anyone else at Arnold & Porter, given their relationship at the
23 time with TAM?

24 A. No.

25 Q. Just for clarity of the record, did Arnold & Porter merge

N4k3usb1

Calamari - Cross

1 with a firm called Kaye Scholer?

2 A. That's my understanding.

3 Q. So when you reached out to Schulte, you reached out to a
4 lawyer named Craig Stein, correct?

5 A. Yes.

6 Q. Why did you go to Mr. Stein?

7 A. Because I was aware that Mr. Stein had a very high level of
8 familiarity with the documents, because I understood him to
9 have drafted them.

10 Q. At the time, Schulte wasn't representing TAM, correct?

11 A. I don't recall specifically. Schulte Roth had a
12 longstanding engagement with both the CDOs and the collateral
13 manager. I don't ever recall them sending me a termination of
14 engagement. So they likely could have still be representing us
15 at the time. But by that time I moved most of the corporate
16 work to Arnold & Porter.

17 Q. When you say the CDOs, are you referring to the issuers?

18 A. Yes.

19 Q. Mr. Brunekreef was a director of the issuers, correct?

20 A. Yes.

21 Q. So, couldn't Mr. Brunekreef had reached out to his counsel
22 at Schulte if he wanted this legal advice?

23 A. I suppose he could have. However, it also seemed rather
24 natural for me to do it. I was a little more of the person
25 doing things than the directors. They directed me to do

N4k3usb1

Calamari - Cross

1 things.

2 Q. So, looking at your direct testimony, I believe you
3 testified in paragraph 44 that you discussed with Mr. Stein the
4 need for his advice on paying the bills of both attorneys and
5 service providers; is that correct?

6 A. Yes.

7 Q. So let's look at your e-mail to Mr. Stein about that
8 conversation. If you flip to tab 7 of your binder, this is
9 Exhibit 1154, an exhibit that has already been admitted in the
10 case.

11 A. My binder is lettered. I think is that G?

12 Q. I had switched back to the numbered binder.

13 A. Okay. Tab 7, yes.

14 Q. Tab 7 is Exhibit 1154. Do you see that?

15 A. Yes.

16 Q. So, this is an e-mail chain between you and Mr. Stein, is
17 that correct?

18 A. Yes.

19 Q. So, if we flip to the second page of this document, Bates
20 stamped 543 are the last three digits.

21 A. Yes.

22 Q. Do you see there is an e-mail, I guess the header of that
23 e-mail is on the previous page. An e-mail from you to
24 Mr. Stein, dated March 20, 2017.

25 A. Yes.

N4k3usb1

Calamari - Cross

1 Q. Do you recall this e-mail?

2 A. Not specifically, but, yes, I generally remember the
3 contents.

4 Q. So you write in this e-mail we are looking at: "Hi, Craig.
5 Nice speaking with you on Friday. As discussed, the directors
6 would like to hear it is reasonable for the escrowed funds to
7 be used to pay legal bills for existing litigation that is
8 expected to bring in additional recoveries for the funds."

9 Do you see that?

10 A. Yes.

11 Q. In your e-mail, you only mention legal bills for existing
12 litigation, correct?

13 A. That's what the words say here, yes.

14 Q. In your mind, the payment of PRES' fees were pretty
15 important, correct?

16 A. I don't know about important, but it was something we were
17 trying to accomplish.

18 Q. But you didn't mention PRES or PRES' fees in this e-mail,
19 correct?

20 A. No.

21 Q. Then you go on to write in the e-mail: "Without the use of
22 these funds, the CDOs are in danger of abandoning legitimate
23 claims that are expected to bring in multiples of those legal
24 expenses."

25 You see that?

N4k3usb1

Calamari - Cross

1 A. Yes.

2 Q. By that you mean, that if not paid, law firms might stop
3 working, is that right?

4 A. Law firms and others, yes.

5 Q. You said others, but you only referenced legal bills there,
6 right?

7 A. In this e-mail, yes.

8 Q. But, it's your understanding that you were concerned that
9 PRES might stop working if their fees weren't paid?

10 A. Yes.

11 Q. And who at PRES would make the decision to stop working?

12 A. I believe I had conversations with both Mr. Garg and
13 Mr. Visweswaran to that effect.

14 Q. And they had indicated to you they were considering
15 stopping working?

16 A. Stopping working and commencing litigation.

17 Q. When you say commencing litigation, what do you mean by
18 that?

19 A. If they weren't paid, that they would sue over it.

20 Q. When you say they would sue, who were they contemplating
21 suing?

22 A. I don't know that it was that level of detail, but
23 presumably the people that owed them the money, so the CDOs.

24 Q. So, PRES was thinking about suing the CDOs, right?

25 A. If they were not -- there was a conversation in which they

N4k3usb1

Calamari - Cross

1 indicated that they wanted to be paid. And again, it was not
2 with both of them on the phone at one point. I believe both of
3 them expressed similar things to me.

4 Q. So let's go back to Exhibit 1154, tab 7 in your binder that
5 we've been looking at. As we flip to the first page sort of
6 going up the e-mail chain, Mr. Stein on March 23 sent you a
7 draft of the memorandum, is that correct?

8 A. Yes.

9 Q. As we go up the chain, it looks like Mr. Priore then
10 forwarded that memo to Mr. Garg, is that right?

11 A. Yes.

12 Q. And this draft memo you forwarded this on to the issuers,
13 is that correct?

14 A. Yes.

15 Q. So let's go now --

16 A. To the directors of the issuers, yes.

17 Q. To the directors of the issuers.

18 Let's go now to tab 8 of your binder. This is Exhibit
19 1156, which has already been admitted into evidence. If you
20 flip to the second page ending in the last three digits 595,
21 this is an e-mail exchange with you and Mr. Brunekreef copying
22 Daniel Rewalt. Do you see that?

23 A. Yes.

24 Q. Do you recall this e-mail exchange?

25 A. Generally.

N4k3usb1

Calamari - Cross

1 Q. So looking at your e-mail sort of in the middle of the
2 page, to Mr. Rewalt and Mr. Brunekreef on the 28th of March,
3 2017, do you see that?

4 A. Yes.

5 Q. In that e-mail, you asked the directors of the issuers to
6 please look at the memo and let you know if you could proceed
7 to pay the 120 plus bills John Moon previously sent. Do you
8 see that?

9 A. Yes.

10 Q. Then you indicated that you were getting a lot of pushback
11 from Kobre, as some of those bills are six month aged. Is that
12 correct?

13 A. Yes.

14 Q. Now, these 120 plus bills, it's possible that some of them,
15 or potentially all of them, had been listed as invoices to be
16 paid inside the waterfall, correct?

17 A. That's possible. I'm not sure I know one way or the other.

18 Q. So then looking sort of to the top e-mail in the chain,
19 this is from Mr. Brunekreef on Friday, March 31, 2017.

20 Mr. Brunekreef returns the draft to you with some markups,
21 right?

22 A. Yes.

23 Q. And then makes a request to pass -- I think there are some
24 typos in here, but effectively to pass the markups on to SRZ
25 and ask if they can include language along these lines. Do you

N4k3usb1

Calamari - Cross

1 see that?

2 A. Yes.

3 Q. So did you send these markups from the issuers back to
4 Mr. Stein?

5 A. I believe that I did.

6 Q. Mr. Stein made some adjustments to the memo as a result of
7 those comments, correct?

8 A. Yes.

9 Q. Did you also review the draft memorandum that Mr. Stein had
10 sent?

11 A. Yes.

12 Q. Did you provide any comments or markups to Mr. Stein's
13 draft memo?

14 A. I don't recall doing that.

15 Q. So after Mr. Stein got these comments from the issuers, he
16 generated a final version of the memo dated April 4, 2017, is
17 that right?

18 A. I'd have to look at the document about the date. But yes.

19 Q. Mr. Stein didn't mention PRES in his memo, correct?

20 A. No.

21 Q. And you did not go back and ask him to include a reference
22 to PRES in his memo, correct?

23 A. No.

24 Q. Let's talk now a little bit about the purchase of ICP.

25 You testified in your direct testimony that in

N4k3usb1

Calamari - Cross

1 January 2015, Triaxx Holdco LLC acquired ICP, correct?

2 A. Yes.

3 Q. Let's flip now to tab 10 of your binder. This is Exhibit
4 1067, an exhibit that has not yet been admitted in this case.
5 Have you seen this document before?

6 A. Not recently, no.

7 Q. Do you know what this document is?

8 A. It appears to be an e-mail from me to Mr. Garg.

9 Q. Just looking at the "from" field, when you say it's from
10 you, that's your e-mail address NCalamari@Triaxxholdco?

11 A. Yes.

12 Q. The e-mail's dated 3/17/2015?

13 A. Yes.

14 Q. This e-mail is sent to Mr. Garg, correct?

15 A. Yes.

16 Q. His e-mail is VGarg@Triaxxholdco.com?

17 A. Yes.

18 MR. LORENZO: We'd ask the Court to move Exhibit 1067
19 into evidence.

20 MS. BEAUMONT: No objection.

21 THE COURT: 1067 is admitted.

22 (Joint Exhibit 1067 received in evidence)

23 Q. So as we're looking at the time of this e-mail in March of
24 2015, this is about two months after the acquisition of ICP,
25 correct?

N4k3usb1

Calamari - Cross

1 A. Yes.

2 Q. The subject of this e-mail is Tom's consulting fees. Do
3 you see that?

4 A. Yes.

5 Q. And do you have an understanding that Tom referenced there
6 is Mr. Priore?

7 A. Yes.

8 Q. Do you know if Mr. Priore is owed consulting fees from the
9 collateral manager?

10 A. I don't know.

11 Q. Do you know if Mr. Priore's owed consulting fees from
12 Phoenix?

13 A. I don't know that.

14 Q. But the e-mail says "he," and that's a reference to
15 Mr. Priore, right?

16 A. Yes.

17 Q. "Is pushing to get paid them and asked me if our account
18 was set up. He says he is owed approx 100K for consulting
19 fees, that he needs to fight for the indemnity claim with
20 Triaxx."

21 Do you see that?

22 A. Yes.

23 Q. So we talked briefly about the acquisition, but it's
24 accurate that Triaxx Holdco ultimately acquired ICP in
25 January 2015, correct?

N4k3usb1

Calamari - Cross

1 A. Yes.

2 Q. After the acquisition of ICP, its name was changed to
3 Triaxx Asset Management, correct?

4 A. Yes.

5 Q. You became the general counsel of TAM, correct?

6 A. Yes.

7 Q. After the acquisition, you were also the general counsel of
8 Triaxx Holdco, correct?

9 A. Yes.

10 Q. Was there a formal written engagement letter or other
11 agreement that reflected these two positions?

12 A. No.

13 Q. How did you come to be the general counsel of Triaxx
14 Holdco?

15 A. After we acquired -- well, of Triaxx Holdco, when we sent
16 up the entity, I would say I appointed myself with no objection
17 from Mr. Garg. It was my practice at the time for sort of the
18 entities that we owned to generally take general counsel roles,
19 as opposed to entities that I did not have any equity interest
20 in, in which case I would do it through engagement letters.

21 Q. Was that same structure, appointing yourself without any
22 objection from Mr. Garg, the same way you became the general
23 counsel of TAM?

24 A. Yes.

25 Q. Overall, your roles and responsibilities at Triaxx Holdco

N4k3usb1

Calamari - Cross

1 generally tracked the roles and responsibilities at TAM, is
2 that correct?

3 A. No. But I mean, to save you some time, there is not a
4 material difference. Triaxx Holdco is a holding company, there
5 is not a lot of operations there. But I would describe my
6 duties there as much more corporate, making sure that the
7 things with Delaware Secretary of State were filed. Things
8 like that. My duties at TAM were much more extensive.

9 Q. Let's put up your deposition video if we have it,
10 Mr. Gibson. Page 99, lines 14 through 20.

11 (Video playing)

12 "Q. Now stepping back and looking at your roles and
13 responsibilities at Triaxx Holdco, so starting from formation
14 until the present, did you have any role or responsibility at
15 Triaxx Holdco?

16 "A. I would say they generally tracked the roles and
17 responsibilities at TAM."

18 Q. Once you started working for TAM, did you submit a letter
19 of resignation at PRES?

20 A. No.

21 Q. Did anyone take over your role at PRES?

22 A. Not to my knowledge.

23 Q. Just to be clear, for the record, at the time you became
24 general counsel of Triaxx Holdco and TAM, you had also been
25 general counsel at PRES, right?

N4k3usb1

Calamari - Cross

1 A. Yes, I was the outside general counsel in connection with
2 an arbitration and certain one-off matters.

3 Q. But, in your role as general counsel at PRES, you had sent
4 the clarification letters we talked about yesterday, right?

5 A. Yes.

6 Q. Did anyone take over your role at PAM as it related to the
7 PRES engagement?

8 A. I'm sorry, with which entity?

9 Q. PAM.

10 A. Oh PAM? No.

11 Q. So once the acquisition of ICP occurred, you did not
12 immediately transition from PRES to working for the collateral
13 manager, correct?

14 A. I would say after we acquired ICP, I no longer took on new
15 responsibilities for PRES. Certainly there were
16 responsibilities related to the arbitration that continued on.

17 Q. But there was still, I think in your words, a lot of work
18 that had to get done and get done quickly at PRES, right?

19 A. Depending on what circumstance, possibly.

20 Q. So you continued to work at PRES, right?

21 A. I continued to work on the arbitration matter to the extent
22 there was work to be done, yes.

23 Q. If you were at TAM and you wanted to communicate with PRES,
24 who would you communicate with?

25 A. I would communicate with Mr. Garg or Mr. Visweswaran.

N4k3usb1

Calamari - Cross

1 Q. If you were at TAM and you wanted to communicate with
2 PAM -- sorry for all these short three letter acronyms -- who
3 would you typically communicate with then?

4 A. Dr. Tang or Mr. Jonsson.

5 Q. Now, once TAM -- strike that.

6 Once you took on your role at TAM, you were
7 responsible for reviewing invoices from PRES, correct?

8 A. It was something that I did, yes.

9 Q. You were responsible for not only reviewing them, but also
10 submitting them to the trustee, correct?

11 A. I don't know that I was responsible for doing that.
12 Sometimes the invoices would go directly from PRES to the
13 trustee.

14 Q. Maybe if we look at --

15 A. But other times I would transmit them, yes.

16 Q. If we look at paragraph 59 of your declaration. Right at
17 the first line of 59, you testify, "In my role on behalf of
18 TAM, I also was responsible for reviewing and submitting for
19 payment the invoices that PRES submitted to the Triaxx CDOs,"
20 correct?

21 A. Yes.

22 Q. Did those PRES invoices list which CUSIPs PRES had worked
23 on in a particular month?

24 A. I don't believe so.

25 Q. Let's look at one of the invoices, and this is tab 17, the

N4k3usb1

Calamari - Cross

1 last tab, the new one we added to your binder. So tab 17 is a
2 document marked as Exhibit 3203 that has not yet been admitted
3 into evidence.

4 Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. It looks like an invoice from PRES to the CDO 06-2.

8 Q. Is the invoice date in the European style January 15, 2016?

9 A. Yes.

10 MR. LORENZO: We ask the Court to move Exhibit 3203
11 into evidence.

12 MS. BEAUMONT: No objection.

13 THE COURT: 3203 is admitted.

14 (Joint Exhibit 3203 received in evidence)

15 Q. So let's take a look at this invoice. Does it list the
16 CUSIPs worked on during this particular period to generate this
17 invoice?

18 A. No.

19 Q. So, simply by reviewing the invoices, you couldn't
20 determine what specific CUSIPs PRES worked on in a given
21 period, correct?

22 A. Correct.

23 Q. So you just had to rely on PRES to accurately sort of
24 invoice the CDOs for the CUSIPs that it worked on?

25 A. Yes.

N4k3usb1

Calamari - Cross

1 Q. Would you characterize it as kind of like an honor system?

2 A. No, I would also, I was working with them on a daily or
3 almost daily basis, so I was very aware of the work that they
4 were doing.

5 Q. When you say you were working on them with them on a daily
6 basis, in fact, you had been intimately involved with PRES in
7 your role as general counsel, right?

8 A. No. I was intimately involved with PAM.

9 Q. And PAM, just so the record is clear, PAM was not involved
10 in the invoices that PRES sent out?

11 A. PAM was involved in the invoices that PRES sent out. I
12 think I just testified that at times Mr. Jonsson, who was at
13 PAM, would send the invoices directly to the trustee.

14 Q. So, was PAM the entity that was tracking the CUSIPs that
15 PRES was then invoicing for?

16 A. Yes.

17 Q. Let's flip now to tab 13 of your binder. It's an exhibit
18 that's been marked as 1126 that has not yet been admitted. And
19 if you flip, there is a sort of cover page, but if you flip the
20 page, there is the e-mail. Let me know if you see that. Bates
21 stamp ending in 228.

22 A. Yes.

23 Q. This is an e-mail from Mr. Brunekreef to you, correct?

24 A. Yes.

25 Q. And it is dated Friday, August 12, 2016?

N4k3usb1

Calamari - Cross

1 A. Yes.

2 Q. Do you recall receiving this e-mail?

3 A. Not specifically.

4 Q. Do you have any reason to doubt that you received this
5 e-mail?

6 A. No.

7 MR. LORENZO: We ask the Court to move Exhibit 1126
8 into evidence.

9 MS. BEAUMONT: No objection.

10 THE COURT: 1126 is admitted.

11 (Joint Exhibit 1126 received in evidence)

12 Q. This e-mail Mr. Brunekreef writes: "Nick, I'm passing on
13 for your review and discussion draft language prepared by
14 Wilmer Hale to support the idea of a notice to all noteholders
15 on the current status of the Triaxx funds."

16 Do you see that?

17 A. Yes.

18 Q. It goes on to say that "The draft highlights a lot of
19 topics, which may or may not be open to share. Further, in
20 view of questions raised by noteholders, we are aiming to
21 disclose reserved funds."

22 Do you see that?

23 A. Yes.

24 Q. So it's your understanding that the directors of the
25 issuers wanted to provide notice to the noteholders of the

N4k3usb1

Calamari - Cross

1 settlements?

2 A. Generally we were discussing that topic, yes. I don't know
3 exactly what they wanted, because even in here, they're
4 indicating that some of it may be able to -- or may or may not
5 be open to share.

6 Q. In addition to settlements, the directors of the issuers
7 wanted to provide notice to the noteholders of reserved funds.
8 Is that your understanding?

9 A. Yes.

10 Q. If we look at the next page of this document, starting with
11 Bates stamp ending in 229, this is the draft notice that
12 Mr. Brunekreef referenced in his e-mail, correct?

13 A. Yes.

14 Q. This notice was not sent to the trustee to distribute to
15 the noteholders, correct?

16 A. I don't recall one way or the other.

17 Q. So is it your recollection that, in fact, the amounts held
18 in reserve were disclosed via notice to the noteholders?

19 A. I mean, at this point, I mean, I believe they were
20 certainly disclosed in connection with litigation at one point.
21 I don't recall, I don't recall this letter going out.

22 Q. Right. And do you recall any notice going out to the
23 noteholders disclosing the amount of reserved funds outside the
24 waterfall?

25 A. No.

N4k3usb1

Calamari - Cross

1 Q. Let's now turn to tab 14 of your binder. This is an
2 exhibit marked 1130, and this exhibit has also not yet been
3 admitted in this case.

4 So as you look at this e-mail chain, this appears to
5 be a continuation of the e-mail chain or I guess e-mail we were
6 looking at in the previous exhibit, correct?

7 A. I haven't seen this, so give me one minute, please.

8 Q. Sure.

9 A. Can you repeat your question?

10 Q. Sure. This e-mail chain in Exhibit 1130 is a continuation
11 of the e-mail that we just looked at in the previous exhibit,
12 correct?

13 A. Yes.

14 Q. Do you recall receiving this e-mail?

15 A. Not specifically.

16 Q. But you're copied on this e-mail chain, correct?

17 A. Yes.

18 Q. Do you have any reason to doubt that you received this
19 e-mail?

20 A. No.

21 MR. LORENZO: We'd ask the Court to move into evidence
22 Exhibit 1130.

23 MS. BEAUMONT: No objection.

24 THE COURT: 1130 is admitted.

25 (Joint Exhibit 1130 received in evidence)

N4k3usb1

Calamari - Cross

1 Q. So, looking at your e-mail, on the bottom of the first page
2 of 1130, ending in 701, you note some issues in your view with
3 the draft of the notice to the noteholders, right?

4 A. I'm sorry. Can you repeat that?

5 Q. Sure. In your e-mail at the bottom of this first page of
6 Exhibit 1130, you write to Mr. Brunekreef, right?

7 A. Yes.

8 Q. And in your e-mail, you note some issues in your view with
9 the draft of the notice to the noteholders, right?

10 A. Yes.

11 Q. And then Mr. Brunekreef responds and says, "The main
12 purpose of a notice is to give an update on current affairs
13 litigations."

14 Do you see that?

15 A. Yes.

16 Q. Then he says, "Secondly, noteholders are pressing for
17 information regarding reserved funds i.e. use of reserved
18 funds."

19 Do you see that?

20 A. Yes.

21 Q. So it's your understanding that the noteholders wanted more
22 disclosure about the litigation recoveries, correct?

23 A. Yes.

24 Q. And the noteholders also wanted more disclosure about the
25 reserved funds, correct?

N4k3usb1

Calamari - Cross

1 A. Yes.

2 Q. But the collateral manager had concerns about providing
3 some of that information, correct?

4 A. I think I had concerns about violating confidentiality
5 provisions and settlement agreements and our ability to
6 negotiate settlements in the future.

7 Q. That concerns about confidentiality in your mind applied to
8 not only the settlement amounts, but also the reserved funds?

9 A. I don't recall specifically.

10 Q. So it's possible there weren't any confidentiality concerns
11 with the amount of the reserved funds; is that correct?

12 A. I don't recall that specifically one way or the other.

13 Q. Let's look now at Exhibit 1162, which is in tab 15 of your
14 binder. And again, 1162 is another exhibit that has not yet
15 been admitted. And like a couple of these previous ones, there
16 appears to be a cover page, but the e-mail is on the next page
17 with the last three digits 551. And this is an e-mail from
18 Mr. Brunekreef to you, correct?

19 A. Yes.

20 Q. It's dated Friday, June 23, 2017?

21 A. Yes.

22 Q. Do you recall receiving this e-mail?

23 A. Not specifically.

24 Q. Do you have any reason to doubt that you received this
25 e-mail?

N4k3usb1

Calamari - Cross

1 A. No.

2 MR. LORENZO: We'd ask the Court to move into evidence
3 Exhibit 1162.

4 MS. BEAUMONT: No objection.

5 THE COURT: 1162 is admitted.

6 (Joint Exhibit 1162 received in evidence)

7 Q. So in his e-mail to you, Mr. Brunekreef writes: "Hi, Nick.
8 I have copied you in on a request addressed to John Moon to
9 provide us with an updated summary of the reserved funds. On
10 the basis of continuing correspondence from noteholders, we
11 wish to publish a notice of the volume of funds withheld."

12 You see that?

13 A. Yes.

14 Q. Then he asks you for a view -- strike that.

15 Then he asks you for your view on how the net cash
16 balance would be split between those funds, correct?

17 A. Yes.

18 MR. LORENZO: Your Honor, at this time we have no
19 further questions for Mr. Calamari.

20 THE COURT: Thank you.

21 Counsel, I know normally we would break at about 11.
22 I'd like to take our break now, if that is reasonably
23 convenient to counsel. And if we find ourselves going too
24 long, then before lunch we can work in another short break at
25 an appropriate time. So, we'll be in recess for 10 minutes.

N4k3usb1

Calamari - Cross

1 I don't think you're done yet, Mr. Calamari, so you
2 will remain under oath, and you will not discuss your testimony
3 with the facts underlying the testimony with counsel or
4 otherwise during the break. We'll be in recess.

5 (Recess)

6 (In open court)

7 THE COURT: Thank you for your patience. I see that
8 Mr. Calamari is back on the stand. He remains under oath. And
9 who will be examining Mr. Calamari now?

10 MR. SAVLA: I believe it's me.

11 THE COURT: Mr. Savla.

12 MR. SAVLA: Yes. And your Honor, we will be handing
13 out our binders, but I actually have some questions from the
14 trustee's binders.

15 THE COURT: Let's stick with the existing binders as
16 long as we can.

17 MR. SAVLA: Yes.

18 (Continued on next page)

N4KKUSB2

Calamari - Cross

1 BY MR. SAVLA:

2 Q. So, Mr. Calamari, as you may know, my name is Sandeep
3 Savla. I represent PIMCO in this case, and I will have some
4 questions for you as well.

5 I'd like to begin with what we've been terming the
6 engagement letters or engagement agreements. It's tab 3 of the
7 binder you have.

8 This is the engagement letter. It's Exhibit 10, which
9 is already in evidence. This is the engagement letter for the
10 2006-1 CDO.

11 Do you see that?

12 A. Yes.

13 Q. All the engagement letters are materially identical,
14 correct?

15 A. Yes.

16 Q. So if we turn to page 12 of the engagement letter, and we
17 look at paragraph 2 --

18 MR. SAVLA: Actually, Mr. Gibson, the one above.

19 Q. Actually, we'll start with the first paragraph.

20 The first paragraph has, "ARAM shall be entitled to an
21 Activist implementation fee equal to \$10,000 per month per
22 security, for which ARAM is engaged by the CDO."

23 Do you see that?

24 A. Yes.

25 Q. So that's a monthly fee of \$10,000 per month per security,

N4KKUSB2

Calamari - Cross

1 correct?

2 A. Yes.

3 Q. And then in the next paragraph, there's a further
4 description. It says, "In respect of a security, the Activist
5 implementation fee shall be," and then it goes on to the rest
6 of the paragraph.

7 Do you see that?

8 A. Yes.

9 Q. I'd like to focus on the language beginning with "provided
10 that."

11 It says, "Provided that the value is determined by the
12 CDO in its sole discretion or the collateral manager on its
13 behalf of funds or assets recovered by the CDO relating to a
14 security exceeds 500,000, the CDO shall pay to ARAM an
15 aggregate amount of Activist implementation fees in respect of
16 such security."

17 Do you see that?

18 A. Yes.

19 Q. And it goes on to say, in a parenthetical, "(taking into
20 account any Activist implementation fees paid by the CDO to
21 ARAM on or prior to such date of determination)."

22 Do you see that?

23 A. Yes.

24 Q. And it says, "equal to 250,000."

25 So would it be fair to say that the aggregate amount

N4KKUSB2

Calamari - Cross

1 of the Activist implementation fee is 250,000?

2 A. My understanding is that a \$250,000 incentive fee was
3 earned when the assets recovered by the CDO exceeded 500,000.

4 Q. Do you see the language, "taking into account any Activist
5 implementation fees"?

6 A. Yes.

7 Q. Do you read that as saying that Activist implementation
8 fees received to date have to be deducted from that amount?

9 A. No.

10 Q. So the language, "taking into account any Activist
11 implementation fees," what does that mean?

12 A. I'm not quite sure, sitting here, taking this by itself.
13 My understanding of the agreement between the parties is
14 informed by sort of all of my experiences at the time.

15 Q. So, when reading this language, you would bring to bear
16 your experience, correct?

17 A. No. I would take into account what the people that wrote
18 this and were doing understood it to be.

19 Q. So you would take into account what the people who wrote
20 this took it to be?

21 A. Yes.

22 Q. And who wrote the engagement letter?

23 A. I don't know specifically, but I understood the engagement
24 letter to have been the product of negotiations between PRES
25 and the collateral manager on behalf of the CDOs.

N4KKUSB2

Calamari - Cross

1 Q. So you would take into account what the person writing the
2 engagement letter thought, but you don't know who wrote the
3 engagement letter?

4 A. I don't know who specifically put pen to paper, but my
5 understanding, from the people that were knowledgeable and
6 around at the time, is that the \$250,000 incentive fee was
7 earned when the funds recovered exceeded \$500,000.

8 Q. Now, let's turn to the next tab, which is tab 4,
9 Exhibit 13, already in evidence. This is what we've been
10 terming the clarification letter.

11 That's your signature, correct?

12 A. Yes.

13 Q. You write in the first paragraph -- and you're writing to
14 Mr. Nissenbaum, correct?

15 A. Yes.

16 Q. You write, "We write to confirm the understanding between
17 the parties related to the due diligence and Activist
18 implementation agreement."

19 So that's the engagement letter we just saw, correct?

20 A. Yes.

21 Q. And then there's a second paragraph that says, "Please
22 confirm that as per the intent of the parties at the time the
23 agreement was negotiated and executed," and it goes on from
24 there, correct?

25 A. Yes.

N4KKUSB2

Calamari - Cross

1 Q. And then there's a bit dealing with Activist implementation
2 fee, and that's romanette iii, and romanette iii says, "The
3 Activist implementation fee was intended to provide that
4 Phoenix is entitled to a payment of 250,000 per security, in
5 addition to the 10,000 per month per security."

6 Do you see that?

7 A. Yes.

8 Q. And now, the taking into account language there has
9 disappeared, correct?

10 A. I don't know about disappeared, but it does not exist here.

11 Q. It does not exist here, correct?

12 A. Correct.

13 Q. Why is it that the taking into account language doesn't
14 exist there?

15 A. Here, I was attempting to write down and record the
16 conversations that I was hearing at the time. And, so, in
17 romanette iii was sort of my understanding of what the parties
18 were discussing.

19 Q. When you say you were trying to memorialize the
20 conversations you were hearing at the time, what conversations
21 were you hearing at the time?

22 A. There were a number of conversations between Mr. Garg,
23 Mr. Nissenbaum, and Mr. Priore, and myself.

24 Q. So, these were based on conversations between
25 Mr. Nissenbaum, Mr. Priore, Mr. Garg, and yourself, and it was

N4KKUSB2

Calamari - Cross

1 based on these conversations that you memorialized this
2 romanette iii, correct?

3 A. Yes.

4 Q. I'd like to turn to -- since I have the benefit of the
5 trustee's binder, I'm going to turn to tab 14, which
6 Mr. Lorenzo showed you, and that's Exhibit 1130, that's already
7 in evidence.

8 A. Yes.

9 Q. Do you recall Mr. Lorenzo asked you about this document?

10 A. Yes.

11 Q. And he directed you to language in the bottom email where
12 it says, "An initial point, as you note, is that disclosing the
13 exact amounts of the settlements will violate the
14 confidentiality settlements and cause problems with BOA/CW and
15 JPM."

16 Do you see that?

17 A. Yes.

18 Q. Now, would disclosing the aggregate amounts of the
19 settlements violate confidentiality settlements?

20 A. Potentially, but certainly the exact amounts would be more
21 likely to, yes.

22 Q. So, even the aggregate amount of the settlement may violate
23 a confidentiality settlement; is that right?

24 A. That's a very general question. I'd have to know more
25 specifics to really answer it. Potentially. If there were

N4KKUSB2

Calamari - Cross

1 enough information, for instance, to be able to back into what
2 the settlement amounts were or -- it's a relatively general
3 question.

4 Q. At the time of this email, August 2016, did you consider
5 whether people could back into settlements?

6 A. I don't recall sitting here today. I probably would have
7 thought about that, though.

8 Q. But you don't know one way or the other; is that fair?

9 A. Sitting here today, I don't have a specific memory of that.

10 Q. Is it fair to say, then, that the noteholders did not know
11 the aggregate amount of the settlements?

12 A. I don't believe so, no.

13 MR. SAVLA: So now I'm going to hand out our binder.

14 Your Honor, may I approach?

15 THE COURT: You may.

16 BY MR. SAVLA:

17 Q. So now, I'm going to ask you to turn to tab 3 in the binder
18 I just handed you.

19 THE COURT: May the Court make a binder production
20 request of counsel? For ease of finding exhibits within
21 binders, and also for ease of keeping track where exhibits
22 are -- and I know it's late in the day, it's Thursday -- the most
23 useful way of organizing these binders is to put the exhibit
24 numbers on the tabs rather than separate tab numbers. That
25 way, there's only one number, which is both the exhibit number

N4KKUSB2

Calamari - Cross

1 and the tab number, and we never lose our place. It's just a
2 thought, if you haven't made tomorrow's binders yet.

3 Proceed, Mr. Savla.

4 BY MR. SAVLA:

5 Q. So, this is Trial Exhibit 2060, which is already in
6 evidence. Just take a moment to read this email.

7 (Pause)

8 A. I've read it.

9 Q. Now, in this email, we see that Mr. Brunekreef is saying,
10 in October 2015, that he talked to you briefly about the
11 Phoenix engagement, correct?

12 A. Yes.

13 Q. And he says he forgot to ask you if you can send a copy of
14 the contract and can you pass this on, correct?

15 A. Yes.

16 Q. In the last paragraph, he appears to be talking about
17 defaulted assets as well, correct?

18 A. Yes.

19 Q. So let's go to the next tab. This is Exhibit 2061, already
20 in evidence. And you see in the bottom email, Mr. Brunekreef,
21 in November then, sends you an email: "Just a reminder about
22 the contracts for the Triaxx funds you promised."

23 Do you see that?

24 A. Yes.

25 Q. And in the email above, you say, "Thanks for the reminder.

N4KKUSB2

Calamari - Cross

1 Attached are the contracts. They are confidential. Please do
2 not distribute beyond Intertrust."

3 Do you see that?

4 A. Yes.

5 Q. So, these are the engagement letters that you sent
6 Mr. Brunekreef in November of '15, correct?

7 A. Yes.

8 Q. You didn't send him the clarification letters, correct?

9 A. No.

10 Q. In order to understand the intent of the parties, you need
11 to read both the clarification letters and the engagement
12 letters, correct?

13 A. I think that would be helpful.

14 Q. The noteholders did not have the engagement letters,
15 correct, before this litigation began?

16 A. I'm not sure one way or the other. Not to my knowledge.

17 Q. And the noteholders did not have the clarification letters
18 before this litigation began, correct?

19 A. Correct.

20 Q. I'd like to ask you about communications with PIMCO.

21 And you believe you had conversations with Ms. Bui at
22 PIMCO, correct?

23 A. Yes.

24 Q. But you don't recall what the specific content of those
25 conversations were, correct?

N4KKUSB2

Calamari - Cross

1 A. Not the specific content, no.

2 Q. You believe that in one of those conversations, Ms. Bui
3 asked you about the sale of defaulted collateral, correct?

4 A. Generally, yes.

5 Q. And you can't remember speaking to Ms. Bui about anything
6 else; is that right?

7 A. That's correct.

8 Q. In your declaration, at paragraph 32, you say, "The
9 noteholders of the Triaxx CDOs knew of and supported the
10 Activist litigations"?

11 A. Correct.

12 Q. You say, "For example, on November 20, 2015, I received a
13 letter from Lisa Cohen, of Schindler Cohen & Hochman, on behalf
14 of Goldman, the noteholder of 2006-1"?

15 A. Yes.

16 Q. And then you attach a copy of her letter?

17 A. Yes.

18 Q. That's Trial Exhibit H, correct, the 3506?

19 A. Yes.

20 Q. And Ms. Cohen, in her letter, she doesn't mention Phoenix,
21 does she?

22 A. No.

23 Q. Let's turn to tab 5 of your binder. And you will see this
24 is Exhibit 27, already in evidence. This is Goldman's answer
25 to the third amended complaint and claims to the RES in this

N4KKUSB2

Calamari - Cross

1 case.

2 Do you see that?

3 A. Yes.

4 Q. So Goldman is taking an opposite position to Triaxx Asset
5 Management in this case.

6 Do you see that?

7 A. I have not read this recently. Where are you referring to
8 specifically?

9 Q. If we just look at the caption, and you see it's
10 Interpleader Defendant Goldman Sachs' answer to the third
11 amended complaint and claims to the RES.

12 A. Yes.

13 Q. If you go to the last page, page 40 of that exhibit --

14 A. Yes.

15 Q. -- you see that that's signed by Goldman and by Lisa Cohen,
16 right?

17 A. Yes.

18 Q. Let's go to paragraph 3 of the affirmative claim to the
19 RES, and that's on page 20.

20 You see Ms. Cohen writes, on behalf of Goldman,
21 "GS&co. asserts affirmative claims to the RES based on: (i)
22 millions of dollars of so-called incentive fees improperly
23 sought by Triaxx Asset Management."

24 Do you see that?

25 A. Yes.

N4KKUSB2

Calamari - Cross

1 Q. And she says they're improperly sought by Triaxx on behalf
2 of its affiliate and agent, Phoenix Real Estate Solutions.

3 Do you see that?

4 A. Yes.

5 Q. And she says she also seeks, or Goldman also seeks, funds
6 that TAM, Phoenix, and the issuers seek to pay for their legal
7 fees and expenses?

8 A. Yes.

9 Q. And then let's go to paragraph 4. In this, Ms. Cohen
10 writes, "In violation of clear contractual provisions requiring
11 TAM to bear the expenses of its affiliates and agents, TAM has
12 engaged in flagrant self-dealings to enrich its owners at the
13 expense of the CDO's noteholders."

14 Do you see that?

15 A. Yes.

16 Q. So, let's look at some of the recoveries and payments,
17 which Mr. Lorenzo also went through with you, but I'd like to
18 do it in a slightly different way. So that's, in our binder,
19 tab 6, Exhibit 40, and it is the version with your signature.

20 So, can we agree that you signed these interrogatory
21 responses?

22 A. Yes.

23 Q. So, in your declaration, at paragraph 37, on page 9, do you
24 see it says, "All told, there have been more than 105 million
25 in gross recoveries"?

N4KKUSB2

Calamari - Cross

1 Do you see that?

2 A. Yes.

3 Q. You say that's because of as a result of the activist work
4 of Triaxx CDOs' litigation counsel using PRES's unique,
5 valuable services and work product, correct?

6 A. Yes.

7 Q. And then you say, "Of that amount, after payment of
8 professional and other fees, more than 64 million has been
9 disbursed to the Triaxx CDOs and paid out to noteholders
10 through the CDO waterfalls."

11 Do you see that?

12 A. Yes.

13 Q. So, let's now turn to the interrogatory response, which is
14 tab 6. If we go to page 3, under (a), it lists out the various
15 recoveries, correct?

16 A. Yes.

17 Q. And it has a total figure of 105 million, approximately?

18 A. Yes.

19 Q. That matches up with your declaration, correct?

20 A. Yes.

21 Q. And then there's an asterisk there, saying, in the fifth
22 line item -- do you see?

23 A. I actually don't.

24 Oh, yes.

25 Q. At the bottom, it says, "These funds were paid to the

N4KKUSB2

Calamari - Cross

1 trustee, and Triaxx understands the trustee disbursed them, but
2 has no further information about their treatment."

3 Do you see that?

4 A. Yes.

5 Q. So it's fair to say that 34 million of these recoveries
6 were paid to the trustee for disbursement through the
7 waterfall, correct?

8 A. Yes.

9 Q. And, then, if we go to the next page, there's a further
10 listing, and it says, "(b) the following amounts have been
11 disbursed to the Triaxx CDOs from an account held or controlled
12 by the law firm of Miller & Wrubel."

13 So that's another 29 million, right?

14 A. 29 and change, 400,000, yes.

15 Q. So that's approximately 63 million that has gone into the
16 CDOs, correct?

17 A. Well, from those two numbers, yeah, 63-1/2.

18 Q. 63-1/2, okay.

19 Now, the collateral managers also directed the trustee
20 to pay 30 million to Phoenix through the priority of payments
21 waterfall, correct?

22 A. Where am I looking?

23 Q. This is just a question to you. It's not on the document.

24 A. I don't recall the exact amount, but it was significant.

25 Q. So, let me read you a joint fact stipulation. "Between

N4KKUSB2

Calamari - Cross

1 2011 and May 2018, the collateral manager directed the trustee
2 to pay approximately 30 million to Phoenix through the priority
3 of payments waterfall."

4 Do you see that?

5 Well, you don't see that --

6 A. I don't see --

7 Q. -- but will you agree with that?

8 A. I have no reason to dispute that. It sounds right to me.

9 Q. We were looking at a number of 63-1/2, and, of that,
10 30 million has then been invoiced by Triaxx Asset Management
11 for Phoenix, correct?

12 A. Yes.

13 Q. And now, if we look at this chart that goes, "The following
14 amounts have been disbursed from accounts held or controlled by
15 the law firm Miller & Wrubel," it goes from page 4, 5 --

16 THE COURT: On the interrogatory responses?

17 MR. SAVLA: On the interrogatory response.

18 Q. So it goes page 4, 5, and then we go into 6, and there's
19 40 million -- 40.7 million, right?

20 A. Yes.

21 Q. So if we add the 40 million that's been disbursed outside
22 the waterfall, and we add the 30 million that Phoenix has
23 invoiced inside the waterfall, am I right that that comes to
24 approximately 70 million that Phoenix has sought or received?

25 A. 40 plus 30 is 70, but I don't know about the rest of that.

N4KKUSB2

Calamari - Cross

1 Q. It's 40 -- okay, 70 million, correct?

2 A. 40 million plus 30 million is 70 million.

3 Q. So it's 40 million from outside the waterfall, correct?

4 A. I'm not trying to dispute; I just don't recall the exact
5 numbers you just gave me. You represented one from the
6 statement of facts. If that was 40, I agree with it.

7 THE COURT: That was 30.

8 Q. Let me take it step by step. From inside the waterfall,
9 it's 30 million, okay? And I will represent that to you, that
10 that's an agreed fact.

11 A. Okay.

12 Q. If we look at this chart -- and this chart deals with
13 outside the waterfall, right -- that's another 40.7 million,
14 correct?

15 A. Those are amounts disbursed from the accounts held by
16 Miller Wrubel, yes.

17 Q. So that's outside the waterfall, correct?

18 A. Yes.

19 Q. So, in total, if we look at inside the waterfall,
20 30 million, and outside the waterfall, 40 million, am I correct
21 that that comes to 70 million?

22 A. It does. Those numbers add up, yes.

23 Q. In this case, if we go back to your declaration, which is
24 tab 2, and we go to paragraph 64, you're claiming -- or,
25 rather, PRES is claiming 23.4 million, correct?

N4KKUSB2

Calamari - Cross

1 A. Yes.

2 Q. So that would take it to 93.4 million, correct?

3 A. 70 plus 23 would be 93 million.

4 Q. So that's -- in total, we're looking at 93 million out of
5 the 105 million recoveries; is that correct?

6 A. That's what the numbers add up to.

7 Q. On top of that, TAM and PRES's lawyers are also seeking
8 legal fees in this action, correct?

9 A. Yes.

10 Q. So, in fact, it would be higher even than that 93 number,
11 correct?

12 A. Yes.

13 Q. Do you still maintain, after seeing those numbers, that
14 these litigations have been of benefit to noteholders?

15 A. Yes. My understanding is that there are significant
16 amounts of money that were put down the waterfall that would
17 not have come in without the activist litigations.

18 Q. Now, you mentioned, I believe you called it, the first
19 interpleader earlier today.

20 Do you remember that?

21 A. The which entity?

22 Q. The first interpleader.

23 Do you remember --

24 A. First interpleader, yes.

25 Q. Was that an interpleader before Judge Pauley?

N4KKUSB2

Calamari - Cross

1 A. Yes.

2 Q. And that had to do with the sale of three-year defaulted
3 securities, correct?

4 A. Yes.

5 Q. That case was litigated by John Pickhardt at Quinn Emanuel,
6 correct?

7 A. Among many others.

8 THE COURT: On behalf of who, Mr. Savla?

9 MR. SAVLA: I'm sorry.

10 Q. On behalf of South Tryon; is that correct?

11 A. Yes.

12 Q. If you look at tab 8 of your binder, do you see that this
13 is a memorandum and order?

14 A. Yes.

15 Q. And it's the memorandum and order in the first
16 interpleader, correct?

17 A. Yes.

18 Q. If you go to page 4 of the memorandum and order, and you go
19 to the bottom, you see it says -- the paragraph begins, "None
20 of the aged defaulted securities have been sold by the
21 collateral manager"?

22 MS. BEAUMONT: Objection. I'm not sure what we're
23 doing with this document, which is not in evidence.

24 THE COURT: Are we going to move the document?

25 MR. SAVLA: We are going to move it into evidence.

N4KKUSB2

Calamari - Cross

1 THE COURT: When are we going to do that?

2 MR. SAVLA: I was just going to authenticate that his
3 affidavit was referenced, and then we would enter it into
4 evidence.

5 THE COURT: All right. I'll give you a couple of
6 questions.

7 MR. SAVLA: Okay.

8 BY MR. SAVLA:

9 Q. If you look at the bottom here, it says, "However, the
10 collateral manager asserts that its ongoing litigation on
11 behalf of Triaxx 2006-1 has and will recover tens of millions
12 of dollars for its investors." And then it cites the Calamari
13 affidavit.

14 This is your affidavit, correct?

15 A. Yes.

16 MR. SAVLA: Your Honor, we move this into evidence.

17 THE COURT: I don't know that a decision by a judge of
18 this court, which is a public document, is actually evidence in
19 this case. So I will not admit Judge Pauley's memorandum into
20 evidence. I'm not prohibiting you from referencing it; I just
21 don't think it's an exhibit.

22 MR. SAVLA: Okay. Well, maybe we can discuss that.

23 THE COURT: We can discuss that at the next break.

24 BY MR. SAVLA:

25 Q. Well, let me direct you to the next tab. This is a

N4KKUSB2

Calamari - Cross

1 declaration of Jonathan Pickhardt in support of South Tryon's
2 motion for summary judgment.

3 Do you see that?

4 A. Yes.

5 Q. If you go to page 6 of 8 – on the top of the document, you
6 see the page numbers – you see an appendix of three-year
7 defaulted securities.

8 Do you see that?

9 MS. BEAUMONT: Objection.

10 THE COURT: I'll give him a couple of questions and
11 see where he's going.

12 THE WITNESS: Yes.

13 BY MR. SAVLA:

14 Q. Do you see that?

15 Now, as of the date of this declaration, which is
16 February 2, 2016, is this a listing of three-year defaulted
17 securities?

18 MS. BEAUMONT: Objection; hearsay, and also not in
19 evidence.

20 THE COURT: Yes, you've got about two questions left,
21 Mr. Savla, to lay a foundation and let me know where you're
22 going with this.

23 BY MR. SAVLA:

24 Q. Is this a listing of three-year defaulted securities?

25 A. This says, "Appendix A – three-year defaulted securities."

N4KKUSB2

Calamari - Cross

1 Q. Were those three-year defaulted securities at issue in the
2 Pauley case?

3 A. Looking at them, I don't know, but I have no reason to
4 doubt Mr. Pickhardt's affidavit.

5 MR. SAVLA: Your Honor, I ask to move this into
6 evidence.

7 THE COURT: I don't think you've laid any foundation
8 for moving this declaration of a witness, who is not before us,
9 which was submitted in a different litigation, into evidence in
10 this case.

11 Denied.

12 MR. SAVLA: Okay.

13 BY MR. SAVLA:

14 Q. Now, in the first interpleader case, the one before
15 Judge Pauley, was there eventually an order requiring Triaxx
16 Asset Management to sell three-year defaulted securities?

17 A. Yes.

18 Q. And Triaxx Asset Management appealed to the Second Circuit,
19 correct?

20 A. Yes.

21 Q. And Triaxx Asset Management also moved for a stay pending
22 appeal, correct?

23 A. Yes.

24 Q. And that stay was denied, correct?

25 A. This is going way back in time for me. I believe there was

N4KKUSB2

Calamari - Cross

1 an interim stay that was granted and then maybe another stay
2 that was denied, but I would have to go back and check the
3 docket to be sure.

4 Q. So let me see if I can refresh your recollection.

5 If we look at tab 10, and if you go to the second
6 page --

7 A. Yes.

8 Q. -- does this refresh your recollection that a stay was
9 denied?

10 A. Again, I know that, ultimately, the stay was denied.
11 Whether or not there was an interim stay, I can't tell you by
12 looking at this piece of paper.

13 Q. But does it refresh your recollection that a stay was
14 denied in August of 2016?

15 A. Yes.

16 Q. And as a result of this denial of stay, did Triaxx Asset
17 Management sell defaulted securities?

18 A. Yes.

19 Q. And it sold them shortly after this August 2016 time
20 period, correct?

21 A. Yes.

22 Q. Or, rather, shortly after this denial of stay?

23 A. It sold them shortly after we received the order from
24 Judge Pauley to sell them.

25 Q. And shortly after the Second Circuit denial of the stay?

N4KKUSB2

Calamari - Cross

1 A. Yes.

2 Q. Do you remember there was also a second interpleader
3 involving PIMCO?

4 A. Yes.

5 Q. That was the case before Judge Nathan, correct?

6 A. Yes.

7 Q. And Judge Nathan issued a decision in July of 2017
8 requiring the sale of certain defaulted securities, correct?

9 A. Yes.

10 Q. After that order, in July 2017, Triaxx Asset Management
11 also sold defaulted securities, correct?

12 A. Yes.

13 Q. And those were three-year defaulted securities, correct?

14 A. Yes.

15 Q. Do you know -- the sale took place shortly after that July
16 order, correct?

17 A. I would presume, yes. We followed the instructions of the
18 court.

19 Q. And Triaxx Asset Management's attorney in the Nathan action
20 was Arnold & Porter Kaye Scholer, correct?

21 A. Yes.

22 Q. It was Eric Whitney at Arnold & Porter Kaye Scholer?

23 A. Among others, yes.

24 Q. And, then, let me see if you can turn to tab 14. I'm just
25 going to refresh your recollection. If we look at the letter

N4KKUSB2

Calamari - Cross

1 dated --

2 MS. BEAUMONT: Objection. I'm not sure that the
3 witness had no recollection.

4 THE COURT: I didn't hear you, Ms. Beaumont.

5 MS. BEAUMONT: I'm not sure the witness said he didn't
6 recall anything. I'm not sure that his recollection is being
7 refreshed --

8 THE COURT: I don't understand Mr. Savla to be
9 refreshing his recollection. I'm going to give him some leeway
10 to figure out what he's trying to do with this document. And
11 then you can object again.

12 MS. BEAUMONT: Okay.

13 MR. SAVLA: So, my understanding is that the witness
14 didn't remember the exact date on which Triaxx Asset Management
15 sold --

16 THE COURT: Hold on one second.

17 Your last question was: "It was Eric Whitney at
18 Arnold & Porter Kaye Scholer?

19 "Among others, yes."

20 And then you asked him to turn to this tab.

21 MR. SAVLA: It was a few questions before that.

22 THE COURT: I see.

23 "Q. The sale took place shortly after that July order,
24 correct?

25 "A. I would presume, yes. We followed the instructions of the

N4KKUSB2

Calamari - Cross

1 court."

2 MR. SAVLA: Let me see if he has a recollection, then.

3 THE COURT: Let's see if he has a recollection.

4 BY MR. SAVLA:

5 Q. Do you remember the date on which Triaxx Asset
6 Management -- date or dates on which Triaxx Asset Management
7 sold the defaulted securities?

8 A. Not specifically. There was -- in the case in front of
9 Judge Nathan, I believe there was an appeal. We obviously
10 ended up selling the securities at some point, most likely
11 after the appeal.

12 Q. Let me see if this refreshes your recollection. So, if you
13 turn to the letter that's before you, and you turn to page 2,
14 and you see, just above the point 2, a brief explanation of why
15 jurisdiction and venue lie in the court, the sentence above
16 that, "In accordance with the court's order, Triaxx conducted
17 auctions for the sale of three-year defaulted securities on
18 August 10, 16, and 17, 2017."

19 Does that refresh your recollection of when Triaxx
20 conducted auctions of the three-year defaulted securities?

21 A. Not specifically, but I have no reason to dispute this.

22 Q. Would it be correct that Triaxx conducted auctions on those
23 days?

24 A. Yes.

25 Q. Now I'm going to just show you some documents just so that

N4KKUSB2

Calamari - Cross

1 we can move them into evidence. I'm not going to ask you
2 questions about the contents.

3 Let me show you first tab 16 of your binder. This is
4 an email from you to Mr. Rewalt, with a cc to Mr. Brunekreef,
5 correct?

6 A. Yes.

7 Q. And Mr. Rewalt is one of the directors of the issuers?

8 A. Yes, he is.

9 Q. This is your email address at the top?

10 A. Yes, it is.

11 Q. And this email -- this document was created and maintained
12 in the regular course of business, correct?

13 A. I mean, it's an email.

14 MR. SAVLA: Your Honor, I move to admit Trial
15 Exhibit 2150.

16 MS. BEAUMONT: We would just object on grounds of
17 relevance, your Honor.

18 THE COURT: I'll admit it.

19 2150 is admitted.

20 (Trial Exhibit 2150 received in evidence)

21 BY MR. SAVLA:

22 Q. The next document is -- the next tab in your binder is a
23 letter dated October 2, 2015, on Triaxx Asset Management
24 letterhead.

25 Is that your signature on the bottom?

N4KKUSB2

Calamari - Cross

1 A. If you could just give me a minute to review the document?

2 Q. Sure.

3 (Pause)

4 A. Yes.

5 Q. So that's your signature.

6 This is Triaxx Asset Management letterhead, correct?

7 A. Yes.

8 MR. SAVLA: Your Honor, we move this into evidence as
9 Trial Exhibit 2151.

10 MS. BEAUMONT: No objection.

11 THE COURT: 2151 is admitted.

12 (Trial Exhibit 2151 received in evidence)

13 MR. SAVLA: The next tab, 2152. Ms. Beaumont, any
14 objection?

15 MS. BEAUMONT: I am going to object on grounds of
16 relevance.

17 THE COURT: Let me read it.

18 (Pause)

19 THE COURT: Objection overruled. 2152 is admitted.

20 (Trial Exhibit 2152 received in evidence)

21 MR. SAVLA: And, again, the attachment to that is
22 2153. We ask that that be moved into evidence as well.

23 THE COURT: That's behind tab 21?

24 MR. SAVLA: Yes.

25 THE COURT: 19, sorry. Behind tab 19?

N4KKUSB2

Calamari - Cross

1 MR. SAVLA: Behind tab 19, yes.

2 THE COURT: Let me read it.

3 Any objection?

4 MS. BEAUMONT: No objection.

5 THE COURT: 2153 is admitted.

6 (Trial Exhibit 2153 received in evidence)

7 MR. SAVLA: Also the next tab, tab 20, 2154.

8 THE COURT: Any objection?

9 MS. BEAUMONT: No objection.

10 THE COURT: 2154 is admitted.

11 (Trial Exhibit 2154 received in evidence)

12 MR. SAVLA: The final document, the next tab, tab 22,

13 we ask that 21 --

14 THE COURT: My binder only goes to 21.

15 I think we just did 20, didn't we? Why don't you just
16 give me the exhibit number.

17 MR. SAVLA: It's 2155.

18 THE COURT: All right.

19 Any objection to 2155?

20 MS. BEAUMONT: No, your Honor.

21 THE COURT: 2155 is admitted.

22 (Trial Exhibit 2155 received in evidence)

23 MR. SAVLA: Thank you. I have no further questions.

24 THE COURT: All right.

25 Mr. Ledley, you told me yesterday you would have

N4KKUSB2

Calamari - Cross

1 questions for this witness.

2 MR. LEDLEY: Just a few minutes, your Honor.

3 THE COURT: That's fine.

4 CROSS-EXAMINATION

5 BY MR. LEDLEY:

6 Q. Hi, Mr. Calamari.

7 THE COURT: You go to the podium with no binder; is
8 that correct?

9 MR. LEDLEY: No binder, your Honor.

10 THE COURT: Do I need to keep any of the recent
11 binders open before me?

12 MR. LEDLEY: I do not believe so.

13 THE COURT: All right. We just want to be prepared
14 here.

15 Go ahead, Mr. Ledley.

16 BY MR. LEDLEY:

17 Q. Hi, Mr. Calamari. Michael Ledley, from Wolmuth Maher &
18 Deutsch, representing the issuers.

19 How are you doing today?

20 A. Very good. Thank you, sir.

21 Q. In paragraph 38 of your direct testimony affidavit, you
22 mentioned the ResCap bankruptcy?

23 A. Yes.

24 Q. You can look it up if you want. That's the reference.

25 Were you involved in directing the litigation efforts

N4KKUSB2

Calamari - Redirect

1 on behalf of the issuers in the ResCap bankruptcy?

2 A. No.

3 Q. Do you know who was involved in directing those litigation
4 efforts?

5 A. I believe Mr. Moon was the lawyer who did the case. I
6 assume, but I do not know, but I assume that Mr. Priore or
7 someone at the collateral manager was directing his actions at
8 the time.

9 Q. So that predated your role at TAM?

10 A. Yes.

11 MR. LEDLEY: No further questions.

12 THE COURT: Any redirect, Ms. Beaumont?

13 MS. BEAUMONT: Just some brief questions, your Honor.

14 REDIRECT EXAMINATION

15 BY MS. BEAUMONT:

16 Q. Good morning, Mr. Calamari.

17 A. Good morning.

18 Q. I believe earlier you testified that at the time in 2017,
19 when you sought legal advice from Mr. Stein at the request of
20 Mr. Brunekreef, you had already received written legal advice.

21 Do you recall that testimony?

22 A. Yes.

23 Q. What did you mean by that?

24 A. Well, actually, I think the collateral manager had already
25 received written legal advice. And I'm referring to the advice

N4KKUSB2

Calamari - Redirect

1 provided by Mr. Nissenbaum in connection with the packets of
2 information that Mr. Moon provided to Mr. Nissenbaum before
3 sending them along to Ms. Martin and the directors of the
4 issuer for approval.

5 Q. To your knowledge -- before you contacted Mr. Stein in 2017
6 seeking legal advice at the request of Mr. Brunekreef, do you
7 know whether anyone at Schulte Roth was aware of PRES's having
8 received payments outside the waterfall?

9 A. Yes.

10 Q. Did Mr. Stein ever tell you, in writing or otherwise, that
11 his written advice, in response to your request on behalf of
12 Mr. Brunekreef, did not include PRES's fees?

13 MR. LORENZO: Objection, your Honor; hearsay.

14 THE COURT: Let me hear the question again.

15 Mr. Court Reporter, can I hear that back?

16 (Record read)

17 THE COURT: I'll allow the question.

18 THE WITNESS: No, he never said that to me.

19 MS. BEAUMONT: Bear with me. I have to get through
20 all the things I crossed out.

21 BY MS. BEAUMONT:

22 Q. Do you happen to know whether the engagement letter between
23 Mr. Lorenzo's firm, Alston & Bird, and the trustee has been
24 provided to the noteholders of the Triaxx CDOs?

25 A. I'm not aware of that happening.

N4KKUSB2

Calamari - Redirect

1 MS. BEAUMONT: I have no further questions.

2 THE COURT: Anybody want a last question or two?

3 I'm going to ask you just a few questions,

4 Mr. Calamari, because everybody in this room, including you,
5 knows the facts better than I do, so I'm catching up a little
6 bit.

7 You're aware that Mr. Nissenbaum was sitting where
8 you're sitting a couple of days ago and testified in this
9 court?

10 THE WITNESS: I understand that he testified, yes.

11 THE COURT: Did anybody tell you or summarize for you
12 any of his testimony?

13 THE WITNESS: No.

14 THE COURT: You're a lawyer?

15 THE WITNESS: Yes.

16 THE COURT: And you were a litigator before you went
17 in-house, so to speak, correct?

18 THE WITNESS: Yes.

19 THE COURT: Did any of your cases, while you were
20 litigating, involve questions of contract interpretation?

21 THE WITNESS: Yes.

22 THE COURT: So you know what an integration clause is,
23 right?

24 THE WITNESS: Yes.

25 THE COURT: Can you share that understanding with us?

N4KKUSB2

Calamari - Redirect

1 THE WITNESS: I'm sorry, integration, is that the same
2 as a merger clause?

3 THE COURT: Well, why don't you tell me what you think
4 those two words mean.

5 THE WITNESS: It's been a long time since I litigated.
6 I don't understand what an integration clause is. I remember
7 very vaguely a merger clause being a sort of place in a
8 contract where you would say, you know, this contains the
9 thoughts of the parties or this contains the understanding of
10 the parties.

11 THE COURT: Okay. Was there a merger clause in the
12 2011 engagement letters that we've seen in this case?

13 THE WITNESS: I would have to review them.

14 THE COURT: You don't remember?

15 THE WITNESS: I don't recall off the top of my head.

16 THE COURT: When you sent what we've called the
17 clarification letters to -- it was Mr. Nissenbaum, right?

18 THE WITNESS: Yes.

19 THE COURT: -- did you go back and look at the
20 engagement letters at that time?

21 THE WITNESS: Yes.

22 THE COURT: Did you look to see whether there was an
23 integration clause or a merger clause in there?

24 THE WITNESS: Sitting here today, I don't recall one
25 way or the other.

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Calamari - Redirect

1 THE COURT: Okay.

2 In your direct testimony declaration, you say in
3 paragraph 31, "With Mr. Nissenbaum's approval, the
4 distributions were made pursuant to the letter to Ms. Martin."

5 And you're referring to distributions made on or after
6 October the 23rd, 2015, to, among others, PRES outside of the
7 waterfall, correct?

8 THE WITNESS: Yes.

9 THE COURT: What exactly did Mr. Nissenbaum approve,
10 as you understand it?

11 THE WITNESS: My understanding was that Mr. Moon
12 prepared packets of information that contained all of the
13 payments that were to be made outside of the waterfall along
14 with all of the backup, and provided those to Mr. Moon before
15 they were to go to the directors. So -- I'm sorry, provided
16 them to Mr. Nissenbaum.

17 THE COURT: Mr. Moon provided them to Mr. Nissenbaum?

18 THE WITNESS: Mr. Moon provided them to
19 Mr. Nissenbaum.

20 And it was Mr. Nissenbaum and Schulte. Not just
21 Mr. Nissenbaum, Mr. Stein was involved. Mr. Stein, I think,
22 actually received the packets from Mr. Moon as well. They;
23 went to both Mr. Nissenbaum and Mr. Stein. Mr. Nissenbaum was
24 the one that actually responded by email approving them, but my
25 understanding was that their job was to review the entire

N4KKUSB2

Calamari - Redirect

1 packet in its entirety. I mean, they were paid \$25,000 for
2 that, so that they could essentially say that it was okay to go
3 to the issuers and that everything was appropriate.

4 THE COURT: You say that that request -- the draft
5 Moon letter with the detail about the distributions and the
6 packages and so forth, you say that was sent to both Mr. Stein
7 and Mr. Nissenbaum at Schulte?

8 THE WITNESS: Yes.

9 THE COURT: And that they were paid, the firm was
10 paid, \$25,000 to -- tell me again?

11 THE WITNESS: To review the packet of information that
12 Mr. Moon provided, as well as the procedure that we were going
13 through, to ensure that everything that we were doing was
14 proper.

15 THE COURT: How did the firm express that approval to
16 you?

17 THE WITNESS: My understanding is that was in writing
18 via email.

19 THE COURT: Do you remember what that email said?

20 THE WITNESS: I don't think it was to me. I think it
21 was to Mr. Moon.

22 THE COURT: Do you remember what it said?

23 THE WITNESS: Something like, this version looks fine
24 to me.

25 THE COURT: And is it your understanding that someone

N4KKUSB2

Calamari - Redirect

1 other than Mr. Nissenbaum was involved in preparing that
2 approval, or in doing the work that led up to that approval?

3 THE WITNESS: I don't know that one way or the other.

4 THE COURT: Did you ever tell Mr. Nissenbaum that the
5 disbursements laid out in that letter from Mr. Moon were being
6 made outside of the waterfall?

7 THE WITNESS: Yes.

8 THE COURT: When did you tell him that?

9 THE WITNESS: I don't know if I -- I don't have a
10 specific memory of telling him that, but that was part and
11 parcel of the entire process.

12 THE COURT: Tell me, as best you can recall, what
13 makes you think he knew that.

14 THE WITNESS: Well, starting initially, before I took
15 over the collateral manager, when I was having -- so back when
16 I was representing PRES in connection with the clarification
17 letters, I believe I had an understanding that -- of the
18 process that Mr. Moon was going through, and I believe Mr. Moon
19 explained to me that no payments could be made until
20 Mr. Nissenbaum approved the entire process. And that process
21 included paying significant amount, millions and millions of
22 dollars, out of the escrow account that was clearly not a part
23 of the regular procedure under the indentures and the waterfall
24 that we had been talking about.

25 So I don't remember that specific conversation, but

N4KKUSB2

Calamari - Redirect

1 that so central to everything that we were doing. I mean, it
2 was, I think, essentially part of the point of why
3 Mr. Nissenbaum was reviewing it. He wasn't reviewing it to add
4 up the invoices or to make sure -- you know what I mean, to
5 press on the invoices. He was there to make sure that the
6 entire process and everything that was happening was
7 appropriate.

8 THE COURT: So, his job wasn't to review for accuracy
9 any one invoice or group of invoices, correct?

10 THE WITNESS: He was not there to, like, tick and tie
11 numbers, no.

12 THE COURT: No.

13 He was there to approve on a conceptual basis?

14 THE WITNESS: I understood that he was there to -- on
15 a conceptual basis?

16 THE COURT: He was there, as you understand it, to
17 give the collateral manager some legal assurance that it was
18 not unlawful to be paying these large sums outside of the
19 waterfall?

20 THE WITNESS: Yes.

21 THE COURT: That's your understanding of what the
22 \$25,000 was for?

23 THE WITNESS: Yes.

24 THE COURT: Can one of the lawyers remind me what
25 exhibit number is the final Schulte memo? And where I might

N4KKUSB2

Calamari - Redirect

1 find it in one of these binders?

2 MS. BEAUMONT: Are you referring to Mr. Stein's memo?

3 THE COURT: Correct.

4 MS. BUCKEL: Your Honor, it's 1158, and we'll put it
5 up on the screen.

6 THE COURT: Oh, that's great. Thanks.

7 There we go.

8 Do you have that on your screen, Mr. Calamari?

9 THE WITNESS: I do.

10 THE COURT: The lawyers tell me it's Exhibit-- what
11 number again?

12 MS. BUCKEL: 1158.

13 THE COURT: -- 1158.

14 You looked at this a little earlier in your testimony,
15 correct?

16 THE WITNESS: I'm not sure if I looked at the final or
17 a copy of it.

18 THE COURT: Okay.

19 MS. BEAUMONT: Your Honor, it might help, just to tie
20 everything together, it's Exhibit K to Mr. Calamari's
21 declaration, which is another version, which is Trial
22 Exhibit 349.

23 THE COURT: So you looked at it when you wrote your
24 declaration?

25 THE WITNESS: Yes.

N4KKUSB2

Calamari - Redirect

1 THE COURT: Even if you didn't look at it earlier
2 today?

3 THE WITNESS: I was just saying earlier today, I think
4 I was shown a draft, but, yes, I'm familiar with this.

5 THE COURT: Do you want a minute to read it? It's not
6 very long.

7 THE WITNESS: No. I'm familiar with it.

8 THE COURT: Do you know if Mr. Stein did any legal
9 research to prepare this memo?

10 THE WITNESS: I don't.

11 THE COURT: Are there any references in the memo to
12 any specific provisions of the indenture, like a paragraph
13 number or something like that?

14 THE WITNESS: No.

15 THE COURT: Did you think that was odd?

16 THE WITNESS: No.

17 THE COURT: Is there any reference anywhere in the
18 two-page memo to any statute or case or principle of law?

19 THE WITNESS: No.

20 THE COURT: Did you think that was odd?

21 THE WITNESS: I don't recall at the time thinking
22 anything -- that there was anything off about this, no.
23 Mr. Brunekreef had asked Mr. Stein for his opinion on things,
24 and he was providing it.

25 THE COURT: Okay. Remind me again, what was the legal

N4KKUSB2

Calamari - Recross

1 bill for the preparation of this memo?

2 THE WITNESS: I don't recall off the top of my head.

3 THE COURT: Was the legal bill for the preparation of
4 this memo paid outside of the waterfall?

5 THE WITNESS: I don't recall.

6 As I say, I believe the previous 25,000 -- each of the
7 \$25,000 that was paid to them was paid outside of the
8 waterfall.

9 THE COURT: Right. We saw that listed in the
10 interrogatory responses, correct?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 Those are all of the questions that I have for
14 Mr. Calamari. Would anyone like to follow up?

15 MR. LORENZO: Very briefly, your Honor.

16 THE COURT: Mr. Lorenzo.

17 RECROSS EXAMINATION

18 BY MR. LORENZO:

19 Q. I apologize for the multiple binders, but if you turn to
20 tab 5 of our binder. I'm just going to pick up on the point
21 the Judge had asked you about a payment to Schulte in
22 connection with the Schulte memo in April of '17.

23 If you look at tab 5 of the trustee's witness binder
24 for you, Exhibit 40, which, again, is the interrogatory
25 responses that we talked about earlier.

N4KKUSB2

Calamari - Recross

1 A. I have tab 5 open.

2 Q. If you flip to page 5, which is this chart, which you
3 previously testified was the outside-the-waterfall payments,
4 correct?

5 A. Yes.

6 Q. Do you see, four lines up from the bottom, there is an
7 entry on November 16, 2017?

8 A. I see there are two entries.

9 Q. There are several entries on November 16, 2017, but the
10 first one, the payee is Schulte?

11 A. I must be looking at the wrong thing. I see something
12 different.

13 Q. I'm on page -- I'm sorry, I'm on page 5.

14 A. I'm sorry, I'm on tab 5, which is --

15 Q. Tab 5, page 5 of tab 5.

16 A. The first line is analytic focus?

17 I'm sorry, it's up on the screen here.

18 Q. Yes.

19 Up on the screen is what I'm looking at, and
20 Mr. Gibson has highlighted the entry that I'm looking at.

21 A. Ah, yes.

22 Q. So this is on November 16, 2017, right?

23 A. Yes.

24 Q. It's a payment to Schulte, correct?

25 A. Yes.

N4KKUSB2

1 Q. And it's for \$20,219.50?

2 A. Yes.

3 Q. And the services are legal services?

4 A. Yes.

5 Q. And it's your understanding that this might be the payment
6 for the Schulte memo?

7 A. It should be, yes.

8 MR. LORENZO: Nothing further, your Honor.

9 THE COURT: All right. We will excuse you,
10 Mr. Calamari.

11 THE WITNESS: Thank you, your Honor.

12 (Witness excused)

13 THE COURT: We can have, if it's convenient to all, a
14 half an hour before our lunch break to get started with our
15 next witness.

16 Ms. Beaumont, what's your preference?

17 MS. BEAUMONT: I believe Mr. Jonsson is here, and I
18 can go get him, and Mr. Vassanji will gear up to do --

19 THE COURT: So we will get started with Mr. Jonsson.

20 I'm going to put these binders away, yes? The binders
21 for Mr. Calamari.

22 MR. VASSANJI: The TAM parties call Sigurgeir Jonsson
23 as their witness.

24 (Witness sworn)

25 THE DEPUTY CLERK: Please state and spell your name

N4KKUSB2

1 for the record.

2 (Discussion off the record)

3 MR. VASSANJI: Permission to approach?

4 THE COURT: Hold on, he needs to state and spell his
5 name first.

6 THE WITNESS: My name is Sigurgeir Jonsson, but most
7 of the time here in the United States, they call me Ziggy, with
8 a Z.

9 THE COURT: Can you spell your last name, please.

10 THE WITNESS: Last name? J-o-n-s-s-o-n.

11 THE COURT: Now spell the first name that you wish to
12 use.

13 THE WITNESS: I will use my legal name,
14 S-i-g-u-r-g-e-i-r.

15 THE COURT: You normally go by?

16 THE WITNESS: Ziggy.

17 THE COURT: Z-i-g-g-y?

18 THE WITNESS: With a Z, as in zoo, Ziggy.

19 THE COURT: Okay.

20 MR. VASSANJI: Permission to approach, your Honor?

21 THE COURT: Permission granted.

22 SIGURGEIR JONSSON,

23 called as a witness by the TAM parties,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

N4KKUSB2

Jonsson - Direct

1 BY MR. VASSANJI:

2 Q. Mr. Jonsson, I've just given you a document entitled,
3 "Corrected Declaration of Sigurgeir Jonsson."

4 Do you have that document in front of you?

5 A. Yes, I do.

6 Q. Does this document constitute your direct testimony in this
7 case?

8 A. Yes, it does.

9 Q. Thank you.

10 MR. VASSANJI: The TAM parties move to admit Sigurgeir
11 Johnson's declaration into evidence.

12 THE COURT: We will admit Mr. Jonsson's declaration as
13 his direct testimony. You will not forget to put it on ECF by
14 the end of the day today.

15 And we will now have cross-examination.

16 MR. VASSANJI: Thank you, your Honor.

17 MS. BUI: Your Honor, may I approach?

18 THE COURT: Ms. Bui.

19 THE WITNESS: Thank you.

20 THE COURT: He gets a binder, and I don't.

21 MS. BUI: I wasn't sure whether I was giving it to
22 Ms. Kay or you, your Honor.

23 THE COURT: Thank you.

24 You may proceed, Ms. Bui.

25 MS. BUI: Thank you.

N4KKUSB2

Jonsson - Cross

1 CROSS-EXAMINATION

2 BY MS. BUI:

3 Q. Good morning, Mr. Jonsson. My name is Samantha Bui, and I
4 am an attorney at Alston & Bird. I represent the trustee,
5 U.S. Bank, in this action, and I am going to be asking you a
6 few questions today.

7 Have you reviewed any of the publicly available
8 filings in this litigation?

9 A. I think I've seen a few, a small fraction.

10 Q. Do you recall which ones?

11 A. No. I think it's the first document. I actually do look
12 at legal documents, I have an account on PACER, and I look at
13 the Southern District Court.

14 Q. Did you review any of the parties' proposed findings of
15 fact they submitted in connection with this litigation?

16 A. Not that I can recall, no.

17 Q. Did you review any direct testimony submitted by other
18 witnesses in this litigation?

19 A. No.

20 Q. You began working at ARAM Global in 2009 as a partner,
21 correct?

22 A. That's correct.

23 Q. And at the time you started working at ARAM Global, who
24 were your other partners?

25 A. The key partners I interfaced with were Raja Visweswaran,

N4KKUSB2

Jonsson - Cross

1 Mike Balboa, Mingsung Tang, Carl Daniel Berthold. I also
2 remember Karoline Molberg. There were a few others, but in the
3 U.S., it was me and Mingsung.

4 Q. Was Mr. Vishal Garg one of your other partners when you
5 started working at ARAM Global?

6 A. At ARAM Global, the entity I worked for and was a partner
7 of, I don't believe Vishal Garg was a partner at the time.

8 Q. As a partner of ARAM Global, did you make any capital
9 contributions?

10 A. No.

11 Q. And you remained a partner at ARAM Global until June of
12 2013, correct?

13 A. I don't know exactly about the partner status, but I
14 stopped receiving payments through ARAM Global around that
15 time.

16 Q. And in 2013, you worked for AVEX Funding; is that right?

17 A. That's correct.

18 Q. And AVEX Funding was a mortgage company in San Francisco;
19 is that right?

20 A. That's correct.

21 Q. And you came to work at AVEX Funding through Mr. Vishal
22 Garg, correct?

23 A. He made the introduction.

24 Q. The introduction to AVEX Funding?

25 A. Yeah.

N4KKUSB2

Jonsson - Cross

1 Q. What work did you do for AVEX Funding?

2 A. So most of it was analyzing the loan pipeline, coming up
3 with suggestions, seeing where AVEX could potentially acquire
4 more customers, et cetera. It's mostly analytics works.

5 Q. You continued to work for AVEX Funding until early 2014,
6 correct?

7 A. That's correct.

8 Q. And you stopped working for AVEX Funding when you received
9 your green card, correct?

10 A. I don't remember whether I got a visa first and then a
11 green card or just a green card, but, yes.

12 Q. You joined 1/0 Capital in June 2013 as a senior partner,
13 correct?

14 A. That's correct.

15 Q. So you worked for 1/0 Capital and AVEX Funding at the same
16 time, correct?

17 A. Can I come with one clarification?

18 So, I want to say joint as a partner, I don't know
19 when the actual -- what date the actual documentation of that
20 was done, but I considered myself a partner from June 2013.

21 Q. Understood.

22 So you worked for 1/0 Capital and AVEX Funding at the
23 same time; is that right?

24 A. It's interesting, when we started 1/0 Capital, it was -- we
25 were thinking about building and, incubating companies. I

N4KKUSB2

Jonsson - Cross

1 joined 1/0 Capital as a partner. I didn't view my role
2 necessarily as a salaried position. This was more like, you
3 know, great minds come together and we build something.

4 So, yeah, I was involved in 1/0, but I was not on the
5 payroll at that time.

6 Q. Understood.

7 But at the time you were involved in 1/0, even though
8 not on the payroll, you were also still working for AVEX
9 Funding, correct?

10 A. That's correct.

11 Q. And AVEX Funding was a subsidiary of 1/0 Capital; is that
12 right?

13 A. To my understanding at the time, that was not the case. At
14 the time.

15 Q. And what is your understanding right now?

16 A. My understanding is that I wouldn't call it a subsidiary,
17 but One Zero Real Estate, to my understanding, acquired AVEX,
18 and One Zero Real Estate at the time was a subsidiary. But
19 this is my understanding. I didn't see the documents
20 necessarily.

21 Q. Do you have any reason to doubt that your understanding
22 right now is inaccurate?

23 THE COURT: I'm sorry.

24 MS. BUI: Sorry.

25 THE COURT: Too many negatives.

N4KKUSB2

Jonsson - Cross

1 MS. BUI: I'll rephrase.

2 BY MS. BUI:

3 Q. So you just testified about your understanding of your
4 current understanding about the relationship between AVEX
5 Funding and 1/0 Capital, right?

6 A. Yes.

7 Q. You said that that was your understanding right now, but
8 you hadn't reviewed any documents, right?

9 A. So, to my understanding, I'm a fact witness. So, when I
10 say, like, what I think, it's my understanding, not necessarily
11 I have seen the acquisition documents or anything. This is
12 just my understanding.

13 Q. And how did you come to that understanding?

14 A. I don't remember.

15 Q. At 1/0 Capital -- you do work for 1/0 Capital's portfolio
16 companies, as well as other related companies, correct?

17 A. Yes.

18 Q. Can you name some of those companies?

19 A. Are you talking about just all time periods?

20 Q. We can talk about right now. What other companies that are
21 1/0 Capital's portfolio companies or related companies do you
22 work for right now?

23 A. So I'm employed by better. Better is the mortgage company.
24 So I'm basically a senior vice president of engineering there.
25 I have very little involvement right now in the other portfolio

N4KKUSB2

Jonsson - Cross

1 companies.

2 Q. From 2011 to 2018, you performed work on behalf of Phoenix
3 Real Estate Solutions Ltd., or PRES; is that right?

4 A. Yes.

5 Q. You did this work while employed by ARAM Global, AVEX
6 Funding, and 1/0 Capital, correct?

7 A. That list is not a hundred percent. I was also employed by
8 a company called The Number during that time period.

9 Q. So, from the period of 2011 to 2018, when you performed
10 work on behalf of PRES, you were employed by ARAM Global, AVEX
11 Funding, 1/0 Capital, and The Number?

12 A. Yes, that's correct.

13 Q. But you were never employed by PRES, correct?

14 A. No.

15 Q. You didn't do work full time for PRES; is that right?

16 A. That is not correct. It depends on time periods.

17 Q. So in 2011 to 2014, you also worked for an entity called
18 Activist Special Advisory Services, correct?

19 A. So there's a complex list of entities and relationships.
20 That's not my expertise. My expertise is the work that we do.
21 I don't think I've had an employment agreement with that
22 company.

23 Q. Have you heard of the company before?

24 A. Say it again, sorry.

25 Q. Have you heard of the company Activist Special Advisory

N4KKUSB2

Jonsson - Cross

1 Services?

2 A. Yes.

3 Q. And you did not have a formal employment agreement with the
4 company; is that right?

5 A. I don't remember having an employment agreement with that
6 entity, no.

7 Q. But did you do work for that entity at all during the
8 2011-2014 time period?

9 A. When you say "work for that entity," to my understanding,
10 all the work we did for the Triaxx funds was obviously for the
11 ultimate benefit of the trusts themselves and PRES. What
12 companies were in the middle was not something I was occupied
13 trying to understand. My focus was on the work.

14 Q. You also did work for PRES for the benefit of an entity
15 called Phoenix Advisors and Managers; is that right?

16 A. I don't think -- I don't think I've done work for PRES for
17 the benefit of Phoenix Advisors and Managers. I don't
18 understand the question.

19 Q. Sure.

20 So, Mr. Jonsson, you were deposed in this action on
21 May 26, 2022; is that right?

22 A. Yes.

23 Q. In that deposition, you gave your truthful testimony; is
24 that right?

25 A. To the best of my ability, yes.

N4KKUSB2

Jonsson - Cross

1 MS. BUI: Tom, can you please play 159/17 through 22.

2 MR. VASSANJI: Objection, your Honor. I'm not sure --

3 (Video played)

4 THE COURT: Pause, please.

5 Objection?

6 MR. VASSANJI: Objection. The witness hasn't said
7 anything inconsistent, so this doesn't appear to be proper
8 impeachment.

9 THE COURT: We won't know if it's inconsistent until
10 we hear the clip, will we? I'll allow it.

11 Now you can play it.

12 (Video played)

13 "Q. And who was that work for the benefit of?

14 "A. The work I did was for the benefit of Phoenix Advisors and
15 Managers."

16 THE COURT: What's the next question, counsel?

17 BY MS. BUI:

18 Q. So your understanding is that Phoenix Advisors and Managers
19 was a subcontractor for PRES, correct?

20 A. Sorry, the question you asked is, did I do work for PRES
21 for the benefit of Phoenix Advisors and Managers? I think the
22 chain was always this one company that I kind of worked for,
23 and then it goes up the chain, ultimately to PRES.

24 Now, the companies along the chain may benefit. The
25 company I was doing the work at this time, the subcontracting

N4KKUSB2

Jonsson - Cross

1 company, was Phoenix Advisors and Managers.

2 Q. And Phoenix Advisors and Managers received payment for its
3 work as a subcontractor, correct?

4 A. To my understanding, yes.

5 Q. You joined Better Holdco in January 2020; is that right?

6 A. Yeah, that's correct.

7 Q. And you're still employed by Better Holdco, right?

8 A. That's correct.

9 Q. And you're also still a senior partner at 1/0 Capital LLC,
10 correct?

11 A. That's correct.

12 Q. So let's talk about your compensation next.

13 From 2011 to 2018, you received a few bonuses from
14 Phoenix Advisors and Managers for the work that you performed
15 for this entity; is that right?

16 A. Yes. That's my recollection, yes.

17 Q. Those bonuses totaled approximately \$1 million; is that
18 right?

19 A. That's my recollection, yes.

20 Q. But you did not receive any salary from Phoenix Advisors
21 and Managers, correct?

22 A. Not directly, not that I remember, no.

23 Q. In 2014, you received a salary from One Zero Real Estate,
24 correct?

25 A. Sorry, say that again.

N4KKUSB2

Jonsson - Cross

1 Q. In 2014, you received a salary from One Zero Real Estate;
2 is that right?

3 A. That's my understanding, yes.

4 Sorry, from 2014, right?

5 Q. 2014, yes.

6 A. Yes, yes.

7 Q. And you continued to receive a salary from One Zero Real
8 Estate until you started on 1/0 Capital's payroll; is that
9 right?

10 A. That's how I remember it, yes.

11 Q. From 2015 to 2020, you received a salary from 1/0 Capital,
12 correct?

13 A. Yes, correct.

14 Q. But in 2013 and 2014, you did receive salary payments from
15 AVEX Funding, correct?

16 A. I received -- I think I received a small salary payment in
17 2013, and I did not get any payments from the company in 2014.

18 Q. So, in 2013, you were paid by AVEX Funding and an entity
19 called EIFC, correct?

20 A. I was paid by AVEX Funding, and, to my understanding, I was
21 paid by EIFC on behalf of ARAM Global and the arrangements they
22 had.

23 Q. And EIFC was run by Mr. Garg, correct?

24 A. It was run by Vishal Garg and Raza Khan, to my
25 understanding.

N4KKUSB2

Jonsson - Cross

1 Q. You stopped receiving compensation from AVEX Funding in
2 2014, when you received your green card, correct?

3 A. Again, I remember receiving payments in 2013. I don't
4 remember receiving any payments from AVEX in 2014.

5 Q. Shifting gears, let's talk about your work for PRES.

6 So you started doing work for PRES in 2011, correct?

7 A. Yes, that's correct.

8 Q. Can you describe the nature of that work?

9 A. Yes. Initially, when we started working, the initial work
10 was understanding the portfolio and then figuring out the ways
11 how we can understand every single security held by Triaxx in
12 detail, so we can start formulating strategies about either
13 chasing reps and warranty breaches or any other strategies that
14 would basically give value to the trusts for recoveries.

15 Q. Who asked you to perform work on behalf of PRES?

16 A. At that time, I was working at ARAM Global, and we had
17 projects that came up one after another. Some panned out, some
18 didn't. This is one of them. I don't remember who
19 specifically asked me to do the work, but this was -- our job
20 at ARAM Global was to help clients.

21 Q. Even though you performed work on behalf of PRES from 2011
22 to 2018, most of your work was completed between 2011 to 2013;
23 is that right?

24 A. As far as I'm concerned, yes, that's my recollection.

25 Q. Because by 2013, in your declaration, you said PRES had

N4KKUSB2

Jonsson - Cross

1 identified the most productive points of attack for outside
2 counsel, correct?

3 A. That was my understanding, yes.

4 Q. And you would not have agreed to perform work for PRES if
5 you thought there were circumstances in which PRES would not
6 get paid for its work, correct?

7 A. Sorry, can you repeat the question?

8 Q. Sure.

9 You would not have agreed to perform work for PRES if
10 you thought that there were circumstances in which PRES would
11 not be paid for it, correct?

12 A. I'm not a stakeholder in PRES, so I think from my
13 perspective -- I mean, I was working for what's probably a
14 subcontractor in this case, so, obviously, if there's no
15 payment for work, we will never have done it, so...

16 Q. So, if you thought that there were circumstances in which
17 PRES would not be paid, is it your testimony that you would not
18 have done the work?

19 A. I would not have done the work.

20 Q. Before you started doing work for PRES, did you look at the
21 indentures of the Triaxx CDOs?

22 A. Yes.

23 Q. And by the time that you started doing work for PRES, ICP
24 was the collateral manager of the CDOs, correct?

25 A. To my understanding, yes.

N4KKUSB2

Jonsson - Cross

1 Q. Did you ever meet with representatives from ICP?

2 A. Yes.

3 Q. Do you recall thinking it was impossible for the collateral
4 manager to receive income through the CDOs' priority of
5 payments waterfall?

6 A. I remember doing an analysis of the waterfall to the
7 manager and trying to uncover all the red flags, all the things
8 that could come up in terms of, like, the manager's future, and
9 I do remember thinking about concerns, yes.

10 Q. Please turn to tab 1 in your binder, which is Exhibit 1017.
11 This is already admitted in evidence.

12 So, Mr. Jonsson, this is an email with an attachment
13 that was sent on September 13, 2010, from Mike Balboa to you,
14 Vishal Garg, and Raja Visweswaran, correct?

15 A. Yes.

16 Q. Attached to that email is a memo titled, "Triaxx Prime CDO
17 2006-2 Third Draft," correct? I think that's if you flip to
18 the next page, which ends in 8403.

19 A. So, there were a few versions of this draft. I cannot
20 testify to whether this is the exact version with the email,
21 but I will have to trust you on that.

22 Q. I can represent that this version was attached to this
23 particular email.

24 So you drafted this memo; is that right?

25 A. That's correct.

N4KKUSB2

Jonsson - Cross

1 Q. On the second page of the memo, under "Expense
2 Reimbursements," on the page ending in 8404, there are comments
3 in blue from Mike Balboa that begin with "MB."

4 Do you see that?

5 A. Yes.

6 Q. In point number 2, in blue, he writes, "If costs are not
7 nearly the amount in the expenses, then how does this work?
8 Ziggy thinks it is impossible for ICP to receive any fees, and
9 the expenses are monitored."

10 Do you see that?

11 A. I see it.

12 Q. Was ICP the collateral manager of the CDOs at the time of
13 this memo?

14 A. I think so, yes.

15 Q. Did you ever communicate to Mr. Balboa that you thought it
16 was impossible for ICP to receive any fees?

17 A. I don't remember any specific communication, but I think
18 the memo kind of encompasses all my thoughts at the time.

19 Q. Toward the bottom of the page, in blue, it says, "VG/Z -
20 when you met with ICP, did they explain how the expense
21 reimbursement worked? It seems this is the only current income
22 they get off these deals?"

23 Do you see that?

24 A. I see that.

25 Q. And does Z refer to Ziggy?

N4KKUSB2

Jonsson - Cross

1 A. I would assume so, but I did not write this.

2 Q. Was the only way for the collateral manager to get income
3 from the Triaxx CDOs through expense reimbursement?

4 A. That -- I don't think that was my understanding.

5 Q. So can you explain what your understanding was?

6 A. Again -- so I don't remember every conversation from this
7 time, but I do remember that one of the reasons why I did this
8 memo at this point in time was to kind of put all my thoughts
9 together after reading the docs. And my understanding, I
10 think, just looking at cash flow analysis, it's clear that
11 there's forecasted income coming to the manager which is not
12 expense reimbursement. So I don't know exactly what Mike is
13 talking about there.

14 Q. Let's move on from -- can you confirm that this memo
15 contains your current understanding regarding how the CDOs
16 would get paid?

17 THE COURT: Current --

18 MS. BUI: Sorry, let me rephrase that.

19 Q. Can you confirm this memo contains your contemporaneous
20 understanding?

21 A. What does that mean?

22 Q. So if you look at this memo, as you look at it today, does
23 it confirm your understanding of the Triaxx Prime CDO 2006-2
24 management fees and expense reimbursement at the time that you
25 wrote this memo?

N4KKUSB2

Jonsson - Cross

1 A. So, at this time -- and, again, this was very preliminary.
2 And, you know, this happens time and time again when projects
3 come up with some ideas, is we get our thoughts together, we do
4 our due diligence, and this was very, very preliminary, I think
5 mostly based on public or semipublic documents about the trust.
6 So, yes, I do think this was kind of my initial analysis on
7 this.

8 Now, I may be wrong, I don't know, but this was kind
9 of my understanding at the time.

10 Q. Understood.

11 Let's move on to a different topic. Before you
12 started doing work for PRES, did you look at the engagement
13 agreements between PRES and the Triaxx CDOs?

14 A. I do remember seeing that. I don't know whether it was
15 right before or around or after I started the work, but I do
16 remember seeing it.

17 Q. You reviewed and helped prepare invoices that PRES
18 submitted to the Triaxx CDOs for its services, correct?

19 A. I was involved in the sending invoices, yes.

20 Q. And you were working for PRES in this capacity?

21 A. I was performing this on behalf of PRES.

22 Q. You testified that each month, PRES sent its invoices
23 either directly to the trustee or to the collateral manager,
24 correct?

25 A. Yes.

N4KKUSB2

Jonsson - Cross

1 Q. And you took the lead in sending invoices out in 2013 to
2 2016, correct?

3 A. That's correct.

4 Q. And so you have knowledge regarding how these invoices are
5 prepared?

6 A. Yes. However, I want to point out specifically that during
7 prep for this trial, when I was reviewing the invoices, and I
8 realized that the base fee had continued being the same,
9 whereas the contract specified a stepdown, I think, after year
10 two. This is something that I was not aware of when the
11 invoices were being prepared.

12 In preparing those invoices, the focus was on the
13 actual work, the CUSIP fee, making sure we are doing work, and,
14 obviously, the ultimate goal is incentive fees. That's the
15 only reason why we worked on this engagement, is to get our
16 clients in this case, the trusts, the massive success in
17 everything we were working on, and, through that, we would
18 benefit. That was the whole reason why we were doing this.

19 Q. Okay. So let's take a look at one of the memos or one of
20 the invoices. Can you turn to tab 3 in your binder. It's
21 Exhibit 3170, and this is not yet in evidence.

22 This is one of the invoices that you helped prepare,
23 correct?

24 A. Yes.

25 MS. BUI: Your Honor, I'd like to move 3170 into

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Jonsson - Cross

1 evidence.

2 THE COURT: Any objection?

3 MS. BEAUMONT: No, your Honor.

4 THE COURT: 3170 is admitted.

5 (Trial Exhibit 3170 received in evidence)

6 BY MS. BUI:

7 Q. So there are a few fees and expenses on this invoice.

8 Do you see that?

9 A. Yes.

10 Q. So one is the due diligence fee. Can you talk to me about
11 how you came to this number?

12 A. I was not part of the negotiation for the contract itself,
13 but I think this was defined in the contract. However, as I
14 mentioned, if this is 2014, this number probably should have
15 been lower.

16 Q. Okay. Let's go to the activist implementation fee next.

17 You testified in your declaration that PRES was
18 entitled to a monthly activist implementation fee of \$10,000
19 for each RMBS trust, up to a \$250,000 cap, on which it was
20 conducting its analysis on each of the Triaxx CDOs, correct?

21 A. That's correct.

22 Q. What CUSIPs is this invoice related to?

23 A. I don't remember, but we kept track of the CUSIPs we were
24 working on. Like, I don't remember, for this particular
25 invoice, which CUSIPs we were working on at the time.

N4KKUSB2

Jonsson - Cross

1 Q. So you can't tell, from the face of the invoice, which
2 CUSIPs it's related to; is that right?

3 A. I don't see the list of the CUSIPs there, no.

4 Q. Was there any overlap between the RMBS trusts held by the
5 CDOs?

6 A. Sorry, say that again.

7 Q. Was there any overlap between the RMBS trusts held by the
8 CDOs?

9 THE COURT: You mean --

10 MS. BUI: The CUSIPs.

11 THE COURT: -- did two different CDOs own part of the
12 same CUSIP?

13 MS. BUI: Correct.

14 THE COURT: Thank you.

15 THE WITNESS: I think there was some overlap, but I
16 don't remember. I mean, that's public or semipublic, but I
17 don't remember the extent of it, no.

18 BY MS. BUI:

19 Q. So, in the event that each of the three Triaxx CDOs held
20 the same RMBS trust, does that mean that the cap was \$750,000?

21 A. I don't -- I mean, there's a contract behind the fees. I
22 don't remember exactly what the contract stated.

23 THE COURT: So, Ms. Bui, I see it's a couple of
24 minutes past 12:30. I'm not going to stop you this minute, but
25 as soon as you get to a good stopping place, we're going to

N4KKUSB2

Jonsson - Cross

1 break for lunch.

2 MS. BUI: Understood, your Honor. I think I can
3 finish in a few minutes --

4 THE COURT: Okay.

5 MS. BUI: -- if that's okay.

6 BY MS. BUI:

7 Q. In the event that the Triaxx CDOs held the same RMBS trust,
8 you wouldn't do more analysis for that trust if it was held by
9 more than one CDO, correct?

10 A. So, I would say when it's the same CUSIP, but different
11 trust, there may be some trust-specific things about the
12 waterfall. So, like, we were analyzing the CUSIP, but in the
13 context of the, you know, individual CDOs who are individual
14 entities.

15 Q. Do you recall how many individual CUSIPs you provided
16 analysis on?

17 A. No, I don't remember the number. It is a lot.

18 MS. BUI: Your Honor, I think I reached a good
19 stopping point, but not completely finished.

20 THE COURT: So we'll break for lunch, and then you'll
21 have additional questions for this witness?

22 MS. BUI: Correct.

23 THE COURT: So we will excuse you briefly, for lunch,
24 Mr. Jonsson. During the break, you are not to discuss your
25 testimony or the facts underlying your testimony with counsel

N4KKUSB2

Jonsson - Cross

1 or others, and you will remain under oath when you return.

2 You may step down.

3 Are there any items of business that counsel wish to
4 bring up with me before we break for lunch?

5 All right. We will be in recess.

6 Mr. Savla?

7 MR. SAVLA: I do have, but perhaps we should excuse
8 the witness first.

9 THE COURT: Mr. Jonsson, you're off duty for now.

10 THE WITNESS: Thank you.

11 (Witness not present)

12 MR. SAVLA: So the first matter is a housekeeping
13 matter, I believe, which is we're moving individual invoices
14 into evidence. I spoke to Ms. Beaumont and Mr. Lorenzo this
15 morning, and I believe we have agreement that we can move the
16 various exhibits into evidence, and we will provide a list of
17 numbers --

18 THE COURT: And do it much as we did on the first day.

19 MR. SAVLA: And do it much as we did on the first day,
20 exactly.

21 THE COURT: Ms. Kay would appreciate that.

22 MR. SAVLA: That's the first thing.

23 THE COURT: And somebody else is going to add up for
24 me -- I think I see where this is going. Is somebody going to
25 add up for me all of the allegedly overcharged fees and all of

N4KKUSB2

Jonsson - Cross

1 the double- or triple-billing, if indeed that's where this is
2 going?

3 MR. SAVLA: So we did hear your Honor's request. We
4 are working on that as we speak.

5 THE COURT: Okay.

6 MR. SAVLA: The other thing I wanted to raise is,
7 obviously, I was showing the witness, Mr. Calamari, various
8 orders. There is a reason for that. You heard that in the
9 opening and heard questions about that, which is the 104
10 securities that are listed in Dr. Tang's declaration. We are
11 of the view that they were sold pursuant to court orders. And
12 while I understand that --

13 THE COURT: And, therefore? Tie it up for me.

14 MR. SAVLA: And, therefore, it was not a question of
15 the PRES and the collateral manager deciding to exercise their
16 discretion. Courts have held that they were required to sell
17 those securities. And when they held onto the securities,
18 courts have held -- Judge Pauley, Judge Nathan, and the Second
19 Circuit -- that that was a violation of the indenture. In our
20 submission, they cannot hold onto securities that courts have
21 said were required to be sold and then claim the increased
22 value as an incentive fee.

23 THE COURT: Because they weren't supposed to be
24 holding onto them in the first place?

25 MR. SAVLA: Because they weren't supposed to be

N4KKUSB2

Jonsson - Cross

1 holding onto them in the first place.

2 THE COURT: Okay. That's a legal argument. Look,
3 you're not going to have trouble persuading me. What
4 Judge Pauley said is what Judge Pauley said and when
5 Judge Pauley said it. I can take initial notice of that. You
6 don't need to get it in through a witness.

7 MR. SAVLA: I think a couple of days ago, I raised --
8 your Honor said, why don't we try getting it in via witnesses,
9 otherwise I can make a motion for judicial notice.

10 THE COURT: Did I say that? I'm sorry, then I led you
11 astray.

12 But seeing your trying to get it in through a witness
13 turned out not to be that helpful, I'm sorry.

14 MR. SAVLA: Well, I can assure you, we struggled with
15 how to do that last night as well.

16 THE COURT: I apologize for leading you astray.

17 MR. SAVLA: So, with that in mind, for the sake of
18 good order, we do have a motion ready, and we'll put that on
19 the docket.

20 THE COURT: I'm trying to keep this simple. You're
21 going to submit to me posttrial submissions, right? They're
22 going to have findings of fact and conclusions of law. And at
23 some point, you're going to cite to the Pauley opinion, and
24 you're going to put a footnote in there that says, your Honor,
25 you can take judicial notice of this. Do we really need to do

N4KKUSB2

Jonsson - Cross

1 more than that?

2 Ms. Beaumont?

3 MS. BEAUMONT: Your Honor, you'll be unsurprised to
4 hear we don't agree with --

5 THE COURT: I'm sure you don't agree with his
6 analysis --

7 MS. BEAUMONT: No.

8 THE COURT: -- but just in terms of getting the
9 elements of his argument before me?

10 MS. BEAUMONT: I think the process that the Court has
11 outlined makes sense.

12 THE COURT: All right. Let's keep this simple.

13 Ms. Beaumont -- when you put that footnote in or that
14 citation in, or you attach the Pauley opinion or the Nathan
15 opinion to your posttrial papers -- she's going to have various
16 arguments about why what you say doesn't make sense, but she's
17 not going to claim I can't read my colleague's opinions, okay?

18 MR. SAVLA: Well, that's fine, your Honor, and that
19 certainly seems like a very practical approach.

20 I will say that reading the opinions, it is the case
21 that the opinion, in turn, refers to Mr. Pickhardt's affidavit
22 or my affidavit, and, so, in order to understand the orders,
23 it's also necessary to look at these affidavits.

24 THE COURT: Well, they are on the publicly available
25 docket of this court. The usual rule is I can take judicial

N4KKUSB2

Jonsson - Cross

1 notice for the contents --

2 MR. SAVLA: Right.

3 THE COURT: -- not necessarily for the truth of the
4 contents --

5 MR. SAVLA: Correct.

6 THE COURT: -- of documents on file, to the extent
7 relevant and so forth.

8 So I think that should cover you.

9 MR. SAVLA: Yes, I think that seems like a very
10 practical approach.

11 THE COURT: Can we all have lunch now?

12 So we will be in recess until 1:40, 1-4-0. Thank you,
13 all, very much.

14 (Luncheon recess)

N4k3usb3

Jonsson - Cross

AFTERNOON SESSION

1:40 p.m.

(In open court)

THE COURT: Good afternoon. You may be seated. You do not need to reintroduce yourselves to me unless there has been a cast change for any of the parties since we broke for lunch.

Before we call our witness back, a scheduling matter. You requested May 25 for oral arguments. I cannot give you May 25 for oral arguments. May 25 is fully booked by other lawyers in other cases. I can give you the following dates. We have looked all around May 25.

I can give you a time of your choice on Monday, May 22 or on Tuesday, May 23, I have a clear calendar on both of those days. I might not have a clear calendar by tomorrow, but today I do.

I can give you the morning of Friday, May 26. I warn you that's the Friday before Memorial Day. I normally don't hear argument on Fridays, but I figure we'll all be trying to take the afternoon off anyway, so I'll make an exception if that suits you. Monday is Memorial Day. I can give you the afternoon of Tuesday the 30th or the afternoon of Wednesday the 31st. My mornings are spoken for those days.

So at the next break or overnight, chat amongst yourselves and see what you agree on, and again, the small

N4k3usb3

Jonsson - Cross

1 print disclaimer here is that these dates are believed to be
2 reliable at the time the information is being conveyed, but may
3 not be by tomorrow.

4 Anything else before we call Mr. Jonsson back?

5 MR. LEDLEY: Can I just inquire how much time would
6 the Court like between receiving post-trial submissions and the
7 hearing argument?

8 THE COURT: That's a good question. I was offered a
9 week when we spoke earlier. That seems to me like a good
10 period of time. I wouldn't like it to be much shorter than
11 that because I think you will want me to have read them, so you
12 have to give me time to do this.

13 And I'm still contemplating capping each party at 45
14 minutes, each party or constellation of parties at 45 minutes,
15 which is why I need sort of a half a day to allow each of you
16 to say what you want to say.

17 Anything further?

18 MS. BEAUMONT: I am not sure if this is premature, but
19 should we talk about the page limits on the post-trial briefs?
20 Sorry to bring it up, but I figure it would come up at some
21 point anyway.

22 THE COURT: I have been here all week, you know. I
23 have been listening. These are not summary judgment motions.
24 What I'm looking for is, as you know, a post-trial proposed
25 findings of fact and conclusions of law. I should think that

N4k3usb3

Jonsson - Cross

1 much of what will end up be being the first few pages of my
2 written opinion you can kind of skip, because that's already in
3 your stipulated facts. I held you to -- I can't remember if I
4 held you to 25 pages or you held yourselves, except for
5 Mr. Savla who did not hold himself to 25 pages pretrial.

6 What are you thinking amongst yourselves?

7 MS. BEAUMONT: I'm not sure we've thought it through.

8 THE COURT: Why don't you think about that amongst
9 yourselves while you are thinking about the date range, and
10 I'll think about it some more as well.

11 I'm struggling, as always, between wanting you to keep
12 it short, because I have to stay awake while I read the entire
13 thing, and not wanting to deprive you of the opportunity to get
14 something important in. And I'm just not sure where that
15 balance is.

16 Mr. Jonsson. I am assuming there is more examination
17 for this witness? And that will be you, Ms. Bui?

18 MS. BUI: Yes, your Honor.

19 THE COURT: You can sit down once again on the stand.
20 And I will remind you, sir, that you are still under oath. So,
21 continued cross-examination by Ms. Bui.

22 MS. BUI: Thank you, your Honor.

23 BY MS. BUI:

24 Q. Mr. Jonsson, before the break, we were talking about
25 invoices. Do you remember that?

N4k3usb3

Jonsson - Cross

1 A. Yes.

2 Q. If you could turn to tab 4 in your binder. That's Exhibit
3 3171, and it is not yet in evidence.

4 So Mr. Jonsson, you reviewed and helped prepare this
5 invoice, correct?

6 A. I do believe that is the case.

7 Q. This is an example --

8 MS. BUI: Your Honor, I would like to move Exhibit
9 3171 into evidence.

10 MR. VASSANJI: No objection.

11 THE COURT: 3171 is admitted.

12 (Joint Exhibit 3171 received in evidence)

13 Q. This is an example of an invoice with an incentive fee,
14 correct?

15 A. Yes.

16 Q. And how did you determine if PRES was entitled to an
17 incentive fee?

18 A. It was -- so, I don't, I don't think I did the
19 determination myself. I do remember working on the invoice,
20 but the determination was the value generation to the Triaxx
21 trusts according to the contract.

22 Q. Do you have any knowledge regarding how the value -- or how
23 was it determined whether the recovered value to the CDOs was a
24 result of PRES' work?

25 A. To my recollection, there was a very thorough exercise in

N4k3usb3

1 terms of CUSIPs that were sold at a lot higher prices than they
2 would have otherwise been if it wasn't for our efforts, and
3 that calculation, I think the cap was taken into account as a
4 basis for those payments.

5 Q. Do you know who made that calculation?

6 A. I think Mingsung did them, but I'm not sure.

7 MS. BUI: No further questions.

8 THE COURT: Who's next? Mr. Savla, you have questions
9 for this witness?

10 MR. SAVLA: No questions.

11 THE COURT: The noteholders have no question for this
12 witness. Issuers?

13 MR. LEDLEY: No questions.

14 THE COURT: Any redirect?

15 MR. VASSANJI: No redirect.

16 THE COURT: You are excused.

17 (Witness excused)

18 THE COURT: Is Dr. Tang available?

19 MR. VASSANJI: Yes. Ms. Beaumont is grabbing him.

20 MR. SAVLA: While we wait for the witness, I'll just
21 foreshadow that Mr. Lauriello and I are going to split the
22 questioning.

23 THE COURT: You want two lawyers from the same firm
24 representing the same client to split the cross-examination of
25 a single witness?

N4k3usb3

1 MR. SAVLA: On different subjects.

2 THE COURT: Normally I would say no to that.

3 MR. SAVLA: Your Honor, we have an exhibit with 900
4 pages with voluminous data.

5 THE COURT: Hold on one minute.

6 Ms. Beaumont, could you and your witness just hold
7 outside for one more moment, please, thank you.

8 MS. BEAUMONT: Absolutely.

9 MR. SAVLA: This is my request, your Honor.

10 THE COURT: And the justification again is what?

11 MR. SAVLA: It is that there is some very complicated
12 data over multiple pages. One of the exhibits is 900 pages.
13 So we've split the work and we would like to split the
14 questioning. We don't think it will prejudice the witness.

15 THE COURT: What's your estimation of the total
16 examination time on behalf of the noteholders?

17 MR. SAVLA: I would estimate three hours.

18 THE COURT: You want to split it between two lawyers?

19 MR. SAVLA: Yes.

20 THE COURT: What's the estimate for the trustee?

21 MS. BUCKEL: Subject to the questioning of the
22 noteholders, I would probably have at most 45 minutes, but more
23 likely 20 to 30 minutes, your Honor.

24 THE COURT: With one lawyer, right?

25 MS. BUCKEL: Yes, your Honor.

N4k3usb3

1 THE COURT: Issuer?

2 MR. LEDLEY: We are unlikely to have any questions but
3 we reserve the right.

4 THE COURT: Any objection to the noteholders splitting
5 the time of cross-examination between two different attorneys?

6 MR. VASSANJI: I will note that the exhibit referenced
7 by counsel for PIMCO, it was represented to me that second tab
8 of 900 pages is actually not even going to be presented to the
9 witness.

10 THE COURT: Is actually not?

11 MR. VASSANJI: Not going to be presented to the
12 witness but that was if --

13 THE COURT: Not going to be presented. What does that
14 mean?

15 MR. VASSANJI: Perhaps Mr. Lauriello would like to
16 clarify.

17 THE COURT: Whether it will be presented to him on
18 cross-examination is not up to you, Mr. Vassanji.

19 MR. VASSANJI: I'm just the messenger.

20 THE COURT: This is a bench trial. There is no jury
21 to be confused. I agree the witness can probably handle it.
22 I'll allow it.

23 But in future, ladies and gentlemen, not like there is
24 a lot of future in this particular trial, just a little bit of
25 future. Don't gang up on Ms. Beaumont that way, and in your

N4k3usb3

Tang - Direct

1 future life as lawyers, if you wish to split a witness, you
2 should bring that up a lot earlier than when the witness is
3 being called from the hallway.

4 MR. SAVLA: Understood. My apologies.

5 MS. BEAUMONT: Did I miss anything?

6 THE COURT: You missed a lot of excitement.

7 We're ready for Dr. Tang.

8 MR. VASSANJI: The TAM parties call Dr. Mingsung Tang
9 as a witness.

10 THE COURT: Dr. Tang, you can step right up and stop
11 before you pass Ms. Kay. No, come a little further.

12 (Witness sworn)

13 THE COURT: Thank you, Dr. Tang.

14 Will someone collect the binders, please.

15 MR. VASSANJI: Permission to approach with the witness
16 declaration?

17 THE COURT: Go ahead.

18 MINGSUNG TANG,

19 called as a witness by the Defendant,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. VASSANJI:

23 Q. Dr. Tang, I've just given you a document entitled trial
24 declaration of Mingsung Tang.

25 Do you have that in front of you?

N4k3usb3

Tang - Cross

1 A. Yes.

2 Q. Does this document constitute your direct testimony in this
3 case?

4 A. Yes.

5 MR. VASSANJI: The TAM parties move to admit
6 Dr. Mingsung Tang's declaration into evidence.

7 THE COURT: It is accepted as his direct testimony.
8 We'll look for it on the docket later today.

9 Noteholders, do you wish to cross-examine?

10 MR. SAVLA: Yes, your Honor. Thank you.

11 CROSS-EXAMINATION

12 BY MR. SAVLA:

13 Q. Hello, Dr. Tang. My name is Sandeep Savla. I represent
14 PIMCO and I will have some questions for you.

15 In your declaration, you state from 2011 to 2018, you
16 performed work on behalf of Phoenix Real Estate Solutions,
17 correct?

18 A. Yes.

19 Q. In the declaration you submitted to the Court, you refer to
20 Phoenix Real Estate Solutions as PRES, right?

21 A. Yes.

22 Q. And you know about PRES and its engagement with the three
23 CDOs, correct?

24 A. Yes.

25 Q. And in your declaration, you described how PRES invoiced

N4k3usb3

Tang - Cross

1 fees for the work it did.

2 A. Correct.

3 Q. And you describe how it invoiced fees from 2011 to 2018,
4 correct?

5 A. Yes.

6 Q. And you describe the expertise of PRES, correct?

7 A. Yes.

8 Q. And PRES used the expertise of yourself, correct?

9 A. Yes.

10 Q. And your testimony today is accurate; yes?

11 A. Yes.

12 Q. It's thorough?

13 A. Yes.

14 Q. It's complete?

15 A. Yes.

16 Q. And you testified in a deposition in 2018 in a prior
17 action, correct?

18 A. Yes.

19 Q. And you were under oath in that deposition just like you
20 are here today?

21 A. Yes.

22 Q. And you had a chance to review the deposition transcript in
23 the 2018 action, correct?

24 A. Yes.

25 Q. And you even put in a correction sheet in that case,

N4k3usb3

Tang - Cross

1 correct?

2 A. Yes.

3 Q. Let me ask you to turn to tab 2.

4 THE COURT: Tab 2 of what?

5 MR. LAURIELLO: Permission to approach the witness
6 with these very large binders.

7 THE COURT: Yes, and one for me, please.

8 MR. LAURIELLO: Two for you, your Honor.

9 THE COURT: One for my staff and one for myself.
10 They're both for me.

11 Where do I start, Mr. Savla, volume 1 or volume 2?

12 MR. SAVLA: Volume 1, tab 2.

13 Q. I'll ask you to go to tab 2, page 6, at line 5.

14 MR. VASSANJI: Objection, your Honor. This document
15 is not in evidence and it is not in their exhibit list either.

16 THE COURT: I'm not sure what Mr. Savla is doing here,
17 whether he's impeaching, whether he's refreshing recollection,
18 which would be odd since the witness hasn't testified that he
19 can't recall anything.

20 What are you doing here, Mr. Savla?

21 MR. SAVLA: I'm impeaching, your Honor.

22 THE COURT: Let's hear it.

23 Q. So, I am going to read to you lines 5 to 22.

24 "Q. What's Phoenix Real Estate Solutions?

25 "A. I don't exactly know the legal entity, either purpose or

N4k3usb3

Tang - Cross

1 who are the personnel in it. I just heard of the name before
2 in passing without knowing the legal ramifications or
3 significance of that entity.

4 "Q. When did you hear the name in passing?

5 "A. That's in conversations.

6 "Q. When did the conversation take place?

7 "A. I don't have a clear memory. But I certainly heard of the
8 word Phoenix Real Estate Solutions before. I don't recall the
9 time nor the circumstances I heard it."

10 Did I read that correctly?

11 MR. VASSANJI: Objection. This isn't exactly
12 impeachment. There is no contrary testimony to be impeached
13 here.

14 THE COURT: Give me a minute.

15 I'll allow it.

16 Do you need to hear the question again, Dr. Tang?

17 THE WITNESS: I'm reading this.

18 Q. I read it correctly; yes?

19 A. Yes.

20 Q. You said this, correct?

21 A. I did.

22 Q. Let me read you another section of your -- let me ask you
23 first. Your testimony today is you have an understanding of
24 what PRES does, correct?

25 A. Yes.

N4k3usb3

Tang - Cross

1 Q. Let me read you another section, and this is page 68, line
2 23, to page 69 at line 7.

3 "Q. What's your understanding of what Phoenix Real Estate
4 does?

5 "A. I don't know.

6 "Q. Is Phoenix Real Estate Solutions part of the 110 Capital?

7 "A. 1/0.

8 "Q. 1/0 Capital group of companies?

9 "A. I don't know."

10 You said that, right?

11 A. Correct.

12 Q. Now, turning back to your testimony today. You said that
13 Phoenix created invoices for its work, correct?

14 A. Yes.

15 Q. And you state in your declaration, "From 2011 to 2018, I
16 performed work on behalf of PRES." Correct?

17 A. Yes.

18 Q. And you say you did that pursuant to its engagement with
19 three collateral debt obligations, and that's the three Triaxx
20 issuers, correct?

21 A. Correct.

22 Q. And you say that you reviewed and helped prepare invoices
23 and supporting charts, correct?

24 A. Correct.

25 Q. And then, you further state that Trial Exhibit 3497 are

N4k3usb3

Tang - Cross

1 examples of those invoices from September 2014, correct?

2 A. Correct.

3 Q. So let's turn to 3497, which is tab 3 of your binder.

4 A. Which binder?

5 THE COURT: My tab 3 is a meeting agenda.

6 MR. SAVLA: I noticed that too. So I'm just --

7 THE COURT: Maybe tab 4?

8 MR. SAVLA: It is tab 4, which is actually Exhibit
9 3306.

10 Q. So, this is an example of the type of invoice you reviewed,
11 correct?

12 A. Are you referring to 3497?

13 Q. No, it's 3306. If Mr. Gibson can bring that up on the
14 screen. And it's also tab 4 of your binder.

15 A. I'm seeing on the screen. Thank you.

16 THE COURT: Now we're caught up with ourselves.

17 THE WITNESS: Yeah, I'm looking at the screen.

18 Q. So, this is an example of the type of invoice you would
19 review at PRES, correct?

20 A. Yes.

21 Q. And it is the sort of invoice you would help prepare?

22 A. Preparing invoice is very, very occasional, based on my
23 role in the group. So, when the task of other people are too
24 busy to deal with, I may occasionally help out. So, this is
25 not my part of the regular workflow.

N4k3usb3

Tang - Cross

1 Q. Okay. So let's turn to paragraph 63 of your declaration.

2 A. Is it on the screen?

3 Q. We can bring it up on the screen. Paragraph 63. And
4 before we get to that, this declaration, let me ask a question
5 before we read paragraph 63.

6 This declaration is accurate, right?

7 A. I was referring to the preparation of figures. I was
8 always responsible for generating any quantification and
9 numbers, so preparing what I'm -- when I say I prepared
10 invoices and supporting charts, I'm referring to that process.

11 Q. So, I guess you presaged my question, because I was going
12 to say in the first sentence there you say "I have reviewed and
13 helped prepare these invoices," correct?

14 A. Yes.

15 Q. And then you say "and I helped prepare these invoices and
16 supporting charts."

17 A. Correct.

18 Q. And you say "that was a regular part of my role working on
19 behalf of PRES."

20 A. Correct. But I wasn't referring to generating the invoice
21 itself.

22 Q. But then, the next sentence in your declaration goes on to
23 say, "These invoices and supporting charts were created at or
24 near the time of the events they record by, or from information
25 transmitted by, persons with knowledge of the information they

N4k3usb3

Tang - Cross

1 record." Correct?

2 A. Yes.

3 Q. So, is it your testimony today that you did not help
4 prepare these invoices?

5 A. So there are two different things. One is the information
6 on the invoices, and the other is the actual process of
7 producing invoices. Those are two different things.

8 I was referring to the quantification side, not the
9 preparation of the piece of paper that will go out to certain
10 people and get paid. That's a separate process other people
11 were doing.

12 Q. So reading the first sentence of paragraph 63, would you
13 agree that saying that "I have reviewed and helped prepare
14 these invoices" is inaccurate?

15 A. From my perspective, when I'm relating those words, I have
16 a certain image in my head that may or may not be the same way
17 you're reading it. Because I was in the trenches doing the
18 work and preparing the numbers. But, it can be interpreted
19 different ways.

20 Q. So it is an interpretation question, yes?

21 A. I would agree.

22 Q. So the sentence "I helped prepare these invoices," that's
23 open to different interpretations, correct?

24 A. Possible.

25 Q. So now we were looking at the invoice in tab 4 which is

N4k3usb3

Tang - Cross

1 3306. Exhibit 3306 not yet in evidence. And is this the type
2 of invoice you've seen before?

3 A. I have seen it, yes.

4 Q. So, and these are the sort of invoices that are created in
5 the regular course of PRES' business, correct?

6 A. Yes.

7 MR. SAVLA: Your Honor, we move to admit Exhibit 3306.

8 THE COURT: Any objection?

9 MR. VASSANJI: No.

10 THE COURT: 3306 is admitted.

11 Q. So now, looking at this, it is an invoice dated
12 February 15, 2018, correct?

13 A. Yes.

14 Q. And the client is Triaxx 2007-1?

15 A. Correct.

16 Q. And if you go down to the bottom left-hand side, it says
17 due diligence fee, correct?

18 A. Yes.

19 Q. And it also says activist implementation fee?

20 A. Yes.

21 Q. And it also has a line item for incentive fee, correct?

22 A. Yes.

23 Q. And it is your testimony, is it not, that you understand
24 what a due diligence fee is?

25 A. I understand the rules, but the legal definition I'm less

N4k3usb3

Tang - Cross

1 clear.

2 Q. So you understand the rules of what a due diligence fee is,
3 but you don't understand the legal definition?

4 A. I'm not 100 percent in the terms of what the legal
5 definition.

6 Q. Do you understand the definition of activist implementation
7 fee?

8 A. Yes.

9 Q. So, you understand what an activist implementation fee is.
10 And do you have an understanding of what a due diligence fee
11 is?

12 A. Again, it is a loosely understanding, because I learned the
13 rules from people who are operating and producing those
14 invoices, and they have read the legal agreement among the
15 different parties.

16 Q. So, let's go back to your declaration and this is paragraph
17 58. Let me know when you're there. I'm going to read you a
18 section before you say anything. The second sentence there
19 says, "According to my understanding of the Triaxx CDOs'
20 engagement of PRES," so let's pause there.

21 You have an understanding of the Triaxx CDOs'
22 engagement of PRES, correct?

23 A. Yes.

24 Q. You go on to say "PRES was entitled to a monthly due
25 diligence fee for each of the three CDOs." Correct?

N4k3usb3

Tang - Cross

1 A. Yes.

2 Q. So, going back to that invoice, do you have an
3 understanding of what a monthly due diligence fee is?

4 A. Again, I understand there is a due diligence fee item on
5 that invoice, and I help prepared the invoice in terms of the
6 numbers. I'm just going by what I understood without having
7 the legal knowledge of what the actual engagement was or what
8 legal entities paying which legal entity. That's what I'm
9 referring to.

10 Q. So let's go back to paragraph 58. And it is up on the
11 screen, and this is from your declaration. It says, "PRES is
12 also entitled to an activist implementation fee for each RMBS
13 trust." Correct?

14 A. Yes.

15 Q. And you have an understanding of what an activist
16 implementation fee is, correct?

17 A. Again, it's a loose understanding. My understanding stops
18 at being able to run calculations on a spreadsheet.

19 Q. So, okay. So now, I am going to ask Mr. Gibson to
20 highlight a different piece. Now, the sentence beginning "this
21 latter fee." And that's referring to the activist
22 implementation fee, right?

23 And you say "The latter fee was comprised of two
24 components, a monthly fee and an incentive fee."

25 So you understand that, correct?

N4k3usb3

Tang - Cross

1 A. Yes.

2 Q. You understand that from PRES' engagement letter, correct?

3 A. Yes.

4 Q. And you have reviewed PRES' engagement letter, correct?

5 A. Not the exact legal agreement in itself. I got the
6 information secondhand from meetings and conversations with
7 other members of the team.

8 Q. Okay. So, you haven't actually reviewed the actual legal
9 document. Is that right?

10 A. Not at that point yet, but in the last few years, I may
11 have come across.

12 Q. So, you may have come across the legal engagement letter,
13 correct?

14 A. Yes.

15 Q. But you're not sure?

16 A. I'm not 100 percent sure.

17 Q. But in the earlier years, you did not see the legal
18 document; is that right?

19 A. That's correct.

20 Q. You were reviewing and preparing invoices from 2011 to
21 2018?

22 A. Based on my understanding from communicating to other team
23 members.

24 Q. And is it fair to say a lot of your understanding about the
25 legal document, the engagement letter, comes from other people?

N4k3usb3

Tang - Cross

1 A. Correct.

2 Q. So, do you know when the engagement letter was entered
3 into?

4 A. Can you repeat your question?

5 Q. When was the engagement letter entered into?

6 A. My recollection is early 2011 time period.

7 Q. But you didn't see it until many years later, correct?

8 A. Correct.

9 Q. But at some stage you came to an understanding of what a
10 monthly fee and what an incentive fee are?

11 A. I learned of those concepts from conversations with other
12 team members from many years ago, from 2011, without actually
13 seeing the legal document itself.

14 Q. So, initially you learned from other team members, correct?

15 A. That I trust, yes.

16 Q. You learned from other team members that you trust.

17 A. Correct.

18 Q. And then later on, you came to see, you think you may have
19 come to see the engagement letters themselves?

20 A. Yes.

21 Q. But you are not sure?

22 A. I'm not 100 percent sure.

23 Q. Okay. So, and the team members who you trust, that is
24 Mr. Calamari, correct?

25 A. Mr. Calamari came to this project later. The people I was

N4k3usb3

Tang - Cross

1 referring to was Vishal Garg and Ziggy Jonsson and John Moon.

2 Q. So you came to learn of this from Mr. Garg, Ziggy Jonsson,
3 and John Moon.

4 A. Possibly. There may possibly be other people, but those
5 are three main source of information from my vantage point,
6 yes.

7 Q. And you came to learn of this when you were employed at 1/0
8 Capital, correct?

9 A. I was never employed by 1/0 Capital. I was a partner of
10 1/0 Capital. The engagement that I have come to learn between
11 PRES and Triaxx, that was entered into 2011, at that time, I
12 was a part of ARAM Global. That's a small consulting company.

13 Q. So you came to learn of the engagement letter when you were
14 at ARAM Global?

15 A. Correct.

16 Q. And at the same time, you were a partner at 1/0 Capital?

17 A. 1/0 Capital didn't happen to me until 2013.

18 Q. So you became a partner at 1/0 Capital in 2013?

19 A. Correct.

20 Q. So you learned from others about the contents of the
21 engagement letter while you were at ARAM Global?

22 A. Correct.

23 Q. But now at least as of the date of your -- at least as of
24 2018, because the time period for your invoices is 2011 to
25 2018, right?

N4k3usb3

Tang - Cross

1 A. Correct.

2 Q. So, at least as of 2018, is it fair to say you have an
3 understanding of what an activist implementation fee is?

4 A. Yes.

5 Q. You have an understanding of what an incentive fee is?

6 A. Yes.

7 Q. And you have an understanding of what a monthly diligence
8 fee is?

9 A. Yes.

10 Q. You may not know the legal definition, but you have an
11 understanding of it?

12 A. Correct.

13 Q. And that understanding is gained either from other people,
14 correct?

15 A. Yes.

16 Q. Or from working at PRES?

17 A. Yes.

18 Q. So now, let's turn to your deposition and before we do,
19 let's just -- let's turn to your deposition then.

20 MS. BEAUMONT: Is this in this case or in another
21 case?

22 THE COURT: That's a fair question. Which deposition?

23 MS. BEAUMONT: Never mind. I got confused. He wasn't
24 deposited in this case.

25 THE COURT: So when you say the deposition, you mean

N4k3usb3

Tang - Cross

1 the deposition in the 2018 case.

2 MR. SAVLA: Correct.

3 THE COURT: Thank you.

4 Q. So let's turn to your deposition at page 113. And before I
5 read you the section. That deposition took place in 2018,
6 correct?

7 A. Yes.

8 Q. So I am going to read you page 113, line 14, to 114 at line
9 25.

10 "Q. You see that Phoenix Real Estate Solutions is in February
11 issuing an invoice for due diligence and activist strategy. Do
12 you know what work this invoice related to?

13 "A. I don't know.

14 "Q. What work did Phoenix do for Triaxx 2007-1 in February of
15 2018?

16 "A. Again, my knowledge on this is purely by reading it now.
17 On surface, I understand what the English words mean from work
18 that I do related to Triaxx. From the perspective Phoenix
19 delivering certain services is we do periodic monitoring and
20 on-demand analysis, whatever the project might entail.

21 "Q. Do you do work at Phoenix connected to cases where Triaxx
22 Asset Management is a plaintiff?

23 "A. I don't know.

24 "Q. What's your guess as to what due diligence and activist
25 strategy means?"

N4k3usb3

Tang - Cross

1 And Mr. Whitney interposes an objection. And you ask
2 I can answer, and Mr. Whitney says, well, I'd prefer you not
3 guess, but if you have actual knowledge. And you say:
4 "A. I don't have actual knowledge, so I don't know the
5 relevance of my guess. Purely looking at English language, not
6 from a legal perspective, due diligence means you are looking
7 at data and arrive at certain conclusions regarding all sorts
8 of matters related to Triaxx CDO."

9 You said that, right?

10 A. I did.

11 THE COURT: Do you have an objection? And the nature
12 of the objection is?

13 MR. VASSANJI: The last two sentences of Dr. Tang's
14 answer were not read into the record.

15 THE COURT: You want to hear the complete answer?

16 MR. VASSANJI: Yes.

17 THE COURT: Let's hear the complete answer.

18 MR. SAVLA: Counsel, would you tell me which lines you
19 want me to read?

20 MR. VASSANJI: I believe you finished reading at the
21 Triaxx CDO. And then there is an additional sentence beginning
22 "and communicate that" which you did not read.

23 Q. "And communicate that and potentially leading to decisions
24 someone may be using the information for."

25 Did I read that correctly?

N4k3usb3

Tang - Cross

1 A. Yes.

2 Q. You said those sentences, right? Those answers?

3 A. Yes.

4 Q. So now let me read you some more from your deposition.

5 Turn to page 129, at lines 14 through 16.

6 THE COURT: Are you still impeaching with respect to
7 the testimony we just heard?

8 MR. SAVLA: I am, yes. Actually, let's turn to pages
9 132, 5 to 19.

10 "Q. Do you know how much Phoenix is to be paid under the
11 contractual agreement?

12 "A. I don't know the details.

13 "Q. Do you have an understanding of what the contract states?

14 "A. I don't know.

15 "Q. Do you know whether Phoenix invoices Triaxx, the asset
16 manager, the collateral manager, on a monthly basis?

17 "A. I'm seeing this piece of paper has certain numbers on it,
18 but this is not part of my responsibility. And I don't deal
19 with this. I never have. I don't anticipate I will in the
20 future."

21 And you said those responses as well, correct?

22 A. Correct.

23 Q. So now I want to ask you about some of the different
24 entities that you've worked for, and I think you said you
25 became a partner at 1/0 Capital. You had worked at ARAM

N4k3usb3

Tang - Cross

1 Global, correct?

2 A. Yes.

3 Q. And you've also worked at Phoenix Advisors & Managers,
4 correct?

5 A. Not directly.

6 Q. So, what do you mean by that, not directly?

7 A. I believe Phoenix Advisors were paying for my salary
8 through a third-party payroll provider. But I don't believe I
9 have an employment engagement with Phoenix.

10 Q. So, you were being paid by Phoenix Advisors & Managers, but
11 you were a partner at 1/0 Capital. Have I stated that
12 correctly?

13 A. Yes.

14 Q. And when you were a partner at 1/0 Capital, until 2018,
15 your offices were at 459 Broadway, correct?

16 A. They had changed over time.

17 Q. But was there a point in time when you were at 459
18 Broadway?

19 A. Yes.

20 Q. What period of time was that?

21 A. I have to go back and check my records. I don't have a --
22 because the office has changed so many times. They started
23 with somewhere at Union Square, and they moved down to -- even
24 before Union Square we were in Stamford, Connecticut. Union
25 Square and then 1700 Broadway, then 450 Park Avenue, then 459

N4k3usb3

Tang - Cross

1 Broadway, then 3 WTC.

2 There are so many offices, I have to go back and check
3 before I can give you a precise answer.

4 Q. But you worked in the same office as Mr. Calamari, correct?

5 A. Not always.

6 Q. Not always. Okay. In 2018, were you at 459 Broadway?

7 A. I could. Again, I can't confirm until I see all my
8 records.

9 Q. So, let me see if I can refresh your recollection. If you
10 turn to your deposition transcript, and that's at tab 2, I am
11 going to read you some lines to see if I can refresh your
12 recollection. And page 18, line 12.

13 "You mentioned that your offices are at 415 Broadway. Is that
14 right?" And you correct me and say 459 Broadway.

15 "Q. 459 Broadway. Is Mr. Calamari in the same office?

16 "A. Yes."

17 Q. Does that refresh your recollection?

18 A. Yes. I'm seeing that I said that. So it must be true
19 then, 459 Broadway.

20 Q. Then it's correct that when you were at 459 Broadway, you
21 are in the same office space as Mr. Calamari, correct?

22 A. Yes.

23 Q. And you sat very close to him.

24 A. That I don't have a clear memory.

25 Q. And then Mr. Garg was in the same office at 459 Broadway,

N4k3usb3

Tang - Cross

1 correct?

2 A. I believe so.

3 Q. Is it fair to say in your day-to-day work, you don't draw a
4 distinction between 1/0 Capital and the work you do for Phoenix
5 Advisors?

6 A. That's correct.

7 Q. And in your day-to-day work, you in fact do not consider
8 whether you are working for 1/0 Capital or Phoenix Advisors &
9 Managers?

10 A. Correct.

11 Q. And I think you mentioned that at Phoenix Advisors &
12 Managers, you get a salary; is that correct? You get paid by
13 them?

14 A. I get paid by a third-party payroll provider, and they were
15 paying my salary on behalf of Phoenix.

16 Q. And this payroll provider pays you for work that you do at
17 Phoenix Advisors & Managers, correct?

18 A. I believe so.

19 Q. And that's a salary of some type, correct?

20 A. Yes.

21 Q. And you also get ownership distributions from 1/0 Capital,
22 correct?

23 A. Yes.

24 Q. There was a settlement with Countrywide in 2014, correct?

25 A. Yes.

N4k3usb3

Tang - Cross

1 Q. And right after, you received a bonus of 250,000, correct?

2 A. Correct.

3 Q. So now, in your declaration, you say that -- and let's turn
4 to it at paragraph 56. You say: "The documents and analyses
5 reflecting PRES' specific work for each of these litigations
6 were prepared at the direction of counsel in connection with
7 those litigations. Exhibit A is a true and correct copy of the
8 privilege log which I understand was prepared by counsel for
9 PRES and TAM in this case."

10 And then in the next paragraph, paragraph 57, you say:
11 "Categories 1-3, 5-9, 11-12, 14-15 and 17-18, and appendix A,
12 reflect work that PRES, including myself, performed on behalf
13 of the Triaxx CDOs at the request of the Triaxx CDOs' counsel
14 in the listed litigations."

15 Correct?

16 A. Correct.

17 Q. So, these categories that you reference at the beginning of
18 paragraph 57, what are they?

19 A. Those were just listings of different tasks.

20 Q. Do you have this front of you?

21 A. Yeah, I have it in front of me.

22 MR. SAVLA: I am going to ask Mr. Gibson to please put
23 it up on the screen if you can. It's Mr. Dr. Tang's
24 declaration, Exhibit A. Joint Trial Exhibit 71. And then if
25 we go to appendix A, and if we go to the various categories

N4k3usb3

Tang - Cross

1 that we -- can you keep scrolling down, I think we'll find the
2 categories.

3 So, we'll come back to that once we locate the
4 documents.

5 (Continued on next page)

N4KKUSB4

Tang - Cross

1 THE COURT: Are we done with Joint Exhibit 71?

2 MR. SAVLA: We are because I can't locate the document
3 myself.

4 I'll come back to it.

5 BY MR. SAVLA:

6 Q. Now, let me switch to another topic. We can come back to
7 that document after a break.

8 The three Triaxx CDOs have expense caps, correct?

9 A. Can you repeat the question?

10 Q. The three Triaxx CDOs, they have expense caps, correct?

11 A. I don't understand your question. They have what?

12 Q. Expense caps.

13 A. Expense caps?

14 Q. Do you know what I'm talking about?

15 A. Yeah. It's a maximum amount of expense they can pay out.

16 Q. Exactly.

17 And so for the Triaxx 2006-1 CDO, the expense cap is
18 175,000, correct?

19 A. I believe so, yes.

20 Q. And for Triaxx 2006-2, it is 200,000, correct?

21 A. Yes.

22 Q. And for Triaxx 2007-1, it is 200,000 as well, correct?

23 A. Yeah.

24 Q. Now, in your declaration, you reference a monthly due
25 diligence fee, and we've discussed that, correct?

N4KKUSB4

Tang - Cross

1 A. Yes.

2 MR. SAVLA: Let's see if we can bring up the
3 engagement letter, which, if memory serves, is Exhibit 12. I
4 don't have it in my binder, but I'll ask for it to be brought
5 up on the screen.

6 Actually, let's look at Exhibit 11, instead.

7 Q. So, this is the 2006-2 engagement letter, correct?

8 A. That's what it says, yes.

9 Q. Then if we go to page 16 of Exhibit 11 – the page before –
10 these are the monthly diligence fees, correct?

11 A. Yes.

12 Q. And you see for the first two years, it's 50,000, correct?

13 A. Yes.

14 Q. And then, after that, it goes down, but for the first
15 two years, it's 50,000, correct?

16 A. Yes.

17 Q. Now let's turn to Exhibit 185, which is already in
18 evidence. And that's tab 9, so that's in the second binder.

19 If we turn to page 8, with the Bates stamp 6809.

20 This is a note valuation report, right?

21 A. Yes.

22 Q. So, if we look at the administrative expense detail, this
23 page shows the various administrative expenses, correct?

24 A. Yes.

25 Q. Do you understand that administrative expenses means that

N4KKUSB4

Tang - Cross

1 they are paid under the priority of payments scheme under the
2 CDO waterfall?

3 A. Can you repeat your question?

4 Q. So, when it refers to administrative expenses, that's paid,
5 what's in the parlance known as, within the waterfall.

6 Do you understand that?

7 A. Yes.

8 Q. So these are all invoices that are being submitted to the
9 CDO, correct?

10 A. Yes.

11 Q. And so do you see there that it has administrative expenses
12 of 85 and 60 thousand for ARAM Phoenix?

13 A. Yes.

14 Q. And that comes out to 145,000, correct?

15 A. Yes.

16 Q. Let's go back to the exhibit we were looking at before,
17 Exhibit 11. If we go back to the prior page, which was
18 page 16, these are diligence fees that are paid every month,
19 correct?

20 A. Yes.

21 Q. So if 50,000 is charged in monthly diligence fees, only
22 150,000 is available for other fees in the waterfall, correct?

23 A. Yes.

24 Q. For the monthly -- for the activist fee, that was charged
25 per CUSIP, correct?

N4KKUSB4

Tang - Cross

1 A. Yes.

2 Q. And so that meant that only -- you would only be able to
3 charge the CDO per security?

4 A. Yes.

5 Q. At Phoenix, was there a system in place for tracking which
6 CUSIPs PRES worked on?

7 A. There was a tracking sheet, yes.

8 Q. And, in fact, you were the person responsible for that
9 tracking sheet, correct?

10 A. It's a shared responsibility, but I was involved.

11 Q. You were one of the people who dealt with the tracking
12 sheet?

13 A. Yes.

14 Q. So now let's go to Exhibit 2045.

15 MS. BEAUMONT: Is there a tab?

16 MR. SAVLA: It's tab 10.

17 Q. Let's read from the bottom.

18 Here we have Ms. Downey writing to Mr. Garg, "Hi
19 Vishal. Would you be able to look at the bill of query and
20 advise?"

21 A. Where are you reading?

22 Q. At the very bottom of the email, of Exhibit 2045.

23 Actually, I'm, sorry, it's the bottom of page 3. So
24 it's actually, "Hi Barbara-Ann. I hope all is well. Please
25 find the attached invoices for this month."

N4KKUSB4

Tang - Cross

1 Do you see that?

2 A. Yes.

3 Q. And then up the chain, it says, "Edel," and this is an
4 email from Tom Priore to Edel Downey, "Edel, prior to
5 submission, can you please confirm with" -- that should be
6 Mingsung -- "and Vishal both the present due diligence fee rate
7 under the contract and the bonds that remain in the two-year
8 diligence period."

9 Do you see that?

10 A. Yes.

11 Q. And the due diligence fee -- it goes on to say, "The due
12 diligence fee for each security has a cap that is reached in
13 approximately two years, and we need to confirm which have
14 reached that cap."

15 Do you see that?

16 A. Yes.

17 Q. And then the email goes on: Hi Vishal. Would you be able
18 to look at the below query and advise."

19 And then you're on the bit further up the chain. You
20 write, "Vishal, do you have an electronic copy of the monthly
21 invoices going back? 17 of the 30 currently" -- "17 of the 30
22 currently active positions have an 'approval date' prior to
23 June 2011. There are 9 RAST positions that we can rotate to,
24 and I need to identify 8 new positions. In addition, seven of
25 the 30 current positions have an approval date of August 2011.

N4KKUSB4

Tang - Cross

1 We will need to find a replacement for them as well as for next
2 month's invoice."

3 Do you see that?

4 A. Yes.

5 Q. And so where the email says "There are 9 RAST positions
6 that we can rotate to," that's a reference to finding new RAST
7 shelves; is that correct?

8 A. Correct.

9 Q. And that's because PRES wanted to analyze new securities,
10 correct?

11 A. Correct.

12 Q. The reference to rotating to securities means you're
13 rotating to analyzing new securities, correct?

14 A. Yes.

15 Q. So let's go up the chain.

16 Here you write, "Vishal: Here is the new list with
17 the following changes: 17 expired positions removed, 10
18 suspended positions added back, and 7 RAST positions added."

19 MS. BEAUMONT: What's on the screen is what you're
20 reading.

21 Q. Now, the expired positions, that means that the securities
22 are no longer subject to the monthly activist fee, correct?

23 A. Yes.

24 Q. The reason that there are – let's see here, 17 plus 7 – 24
25 securities at issue is because the CDO waterfall has an expense

N4KKUSB4

Tang - Cross

1 cap, correct?

2 A. Yes.

3 Q. And so it doesn't make sense to review a lot of securities
4 because of the CDOs' expense cap, correct?

5 A. This part is confusing to me because, as I expressed
6 earlier, I never seen the legal document itself for many years.
7 I may have seen it more recent years. So, I was just
8 discussing all this arrangements with team members, and, in my
9 mind, the work has always been ongoing, has been done, and this
10 is really just part of how to realign the work that's being
11 done and how the payment is going to come through. That's all
12 there's to it.

13 So, I don't exactly know what question coming out of
14 this you want to ask me.

15 Q. Let me ask my question again.

16 We saw before, when I asked you about the expense caps
17 for the CDO -- do you remember that?

18 A. Yes.

19 Q. -- that there's a 200,000 cap for the 2007-1 CDO, for
20 example, correct?

21 A. Yes.

22 Q. And then for the due diligence fee, that's a monthly fee,
23 correct?

24 A. Yes.

25 Q. And the activist, the monthly activist fee, that also has a

N4KKUSB4

Tang - Cross

1 monthly component, correct?

2 A. Yes.

3 Q. That's per CUSIP?

4 A. Yes.

5 Q. So if you analyze too many CUSIPs, you will hit the cap,
6 wouldn't you?

7 A. I assume, yes.

8 Q. So, again, the reason you were rotating the securities is
9 so that PRES would not hit the cap, correct?

10 A. That's what it appears, look like.

11 Q. Now let's go to paragraph 68 of your declaration.

12 You say, "In March 2011, some of Triaxx CDOs' senior
13 noteholders, including PIMCO, demanded the collateral manager
14 sell some of the RMBS in the Triaxx CDOs' portfolios," correct?

15 A. Yes.

16 Q. What did PIMCO say to the collateral manager in March 2011?

17 A. This is from conversations we had at the time, that PIMCO,
18 as a senior holder of the CDOs, recommended that Triaxx sell
19 positions that are in default, as defined by the CDO documents.

20 Q. Okay. So this is based on your understanding from
21 others --

22 A. Yes.

23 Q. -- that PIMCO asked for a sale at that time?

24 A. Yes.

25 Q. And it asked for a sale because securities making up the

N4KKUSB4

Tang - Cross

1 collateral pool of the CDOs were in default?

2 A. According to the document of the CDO trust.

3 Q. According to the document of the CDO trust.

4 And then, according to the document of the CDO trust,
5 after three years, the collateral manager was required to sell
6 those securities, correct?

7 A. I think the language was not crystal clear. I was
8 reviewing the language. I couldn't determine whether it's
9 100 percent required or not.

10 Q. So you reviewed the CDO indenture language?

11 A. Yes.

12 Q. And it wasn't a hundred percent clear whether the
13 collateral manager had to sell the three-year -- can we call
14 them three-year defaulted securities?

15 A. Yes. I think, if I recall correctly, there was mentioning
16 of maximizing the benefit of the trust. So, although there's
17 language in the deal document that says, if a position has been
18 labeled as in default for more than three years, the collateral
19 manager should consider selling them, but I don't remember the
20 exact language.

21 Q. Okay. But you looked at that language?

22 A. I did.

23 Q. And you determined that it would be in the interests of all
24 noteholders to retain the securities?

25 A. Correct.

N4KKUSB4

Tang - Cross

1 Q. And not to sell them?

2 A. Correct.

3 Q. Because you thought that the securities would go up in
4 value?

5 A. The going up in value is really not the initial idea. The
6 idea was to be an active investor and pursuing active
7 strategies that will change the outcome of the collateral
8 portfolio so that the trust will benefit from the efforts.

9 Q. So the idea was, you retained the securities, pursue
10 activist litigation, right, and then the activist litigation
11 would improve the trusts?

12 A. Correct.

13 Q. And so you write, "At the time such sales would have
14 benefited only or primarily the senior noteholders," correct?

15 A. Yes.

16 Q. "Which would have received the bulk of the proceeds, while
17 locking in the then-current losses in the value of the
18 collateral, to the detriment of more junior noteholders,"
19 correct?

20 A. Correct.

21 Q. So the determination of whether to sell, that was the
22 collateral manager's, correct?

23 A. I believe so.

24 Q. And you were -- in March 2011, you were at ARAM Global,
25 correct?

N4KKUSB4

Tang - Cross

1 A. Yes.

2 Q. So is it at ARAM Global that you decided that it would not
3 be in the interests of all the noteholders to sell?

4 A. There was an engagement between Triaxx Asset Management and
5 Phoenix. Although I wasn't clear about all this legal entities
6 at the time, but my understanding at the time was, although I
7 was someone at ARAM Global, but I was involved in helping the
8 situation and trying to make the best of the circumstances. I
9 wasn't acting as a collateral manager then, not now, not ever.
10 We were just trying to help.

11 Q. Is it your understanding that Phoenix is doing work that
12 was previously done at Triaxx, the collateral manager?

13 A. I don't know what Triaxx Asset Managers were doing prior to
14 that. I'm just guessing.

15 Q. But is Phoenix doing work that previously would have been
16 done at Triaxx, the asset manager?

17 A. I don't think so.

18 Q. Now let's look at your deposition testimony. We'll look at
19 page 131, line 3, and we'll go into page 132 at line 4.

20 "Q. Is it your understanding that Phoenix is doing work that
21 was previously done by personnel at Triaxx?

22 "A. I don't know for sure.

23 "Q. Is that your understanding?

24 "A. It is my understanding.

25 "Q. And by Triaxx, I'm referring to Triaxx, the collateral

N4KKUSB4

Tang - Cross

1 manager.

2 Do you understand that?

3 "A. Yes. I was aware that Triaxx, at the peak --

4 MS. BEAUMONT: I'm not sure.

5 MR. VASSANJI: Page 132 on the screen. I think you
6 cited --

7 THE COURT: The page is out of sync.

8 MR. SAVLA: It is page 131, yes.

9 BY MR. SAVLA:

10 Q. I think I was up to line 12.

11 "A. Yes. I was aware that Triaxx, at the peak, has many, many
12 employees, is an asset manager specializing in RMBS CDOs. That
13 was the knowledge I had at the time. Other than that, I don't
14 know anything else with respect to who are the key personnel
15 within the firm, at what stage they were in. I knew that they
16 needed help from ARAM Global, and I was happy to provide it.

17 "Q. So just for the clarity of the record, is it fair to say
18 that it's your understanding that Phoenix is doing the work
19 that previously was done by personnel at Triaxx, the asset
20 manager?

21 "A. I believe that's a safe assumption."

22 Q. So those were your responses, correct?

23 A. Correct.

24 Q. So now I'll ask my question again: Is it fair to say that
25 Phoenix is doing work that was previously done by Triaxx Asset

N4KKUSB4

Tang - Cross

1 Management?

2 A. The understanding has evolved. When I made a statement
3 back then, I was thinking out loud in terms of Triaxx Asset
4 Management used a lot employees, and they're no longer there,
5 so Phoenix was naturally stepping in the shoes of managing the
6 collateral. But upon hearing your question today, whether
7 Phoenix would be doing the same kind of work as Triaxx, after
8 learning all the stuff over the years, the answer is different.
9 Although it can be consistent with the statement here in the
10 deposition in the sense that Phoenix was doing all the work on
11 behalf of Triaxx Asset Management, where most of the employees
12 has left; however, the nature of the work would have been
13 180 degrees different because Phoenix was doing activist work
14 and was never carried out by any CDO managers, including Triaxx
15 CDOs. That's what I meant.

16 Q. So Phoenix is acting -- is managing the collateral,
17 correct?

18 A. Helping to manage the collateral.

19 Q. Helping to manage the collateral?

20 A. And paid for it.

21 Q. And paid for it.

22 A. Yeah, paid for it from Triaxx, yes.

23 Q. And paid for it by Triaxx Asset Management?

24 A. I don't know where the engagement was. I was only aware
25 that Phoenix was doing work and getting paid because of this

N4KKUSB4

Tang - Cross

1 engagement.

2 Q. And Phoenix, I think you used the word, is stepping into
3 the shoes of the collateral manager; is that correct?

4 A. Back in the day, that's what my understanding was, but not
5 my understanding today, because looking back, the type of work
6 carried out by a generic CDO manager and Phoenix was totally
7 different.

8 Q. So by virtue of Phoenix's help, the collateral manager has
9 changed into a different collateral manager; is that correct?

10 A. I'm the wrong person to ask about collateral manager
11 because I don't live in that world. I live in my trenches
12 doing analysis, looking at numbers.

13 Q. I thought I heard you said the nature of the collateral
14 managers changed; is that correct?

15 A. Only as far as speaking from a nonlegal perspective.

16 Q. So from a nonlegal perspective, the nature of the
17 collateral managers changed?

18 A. What I said was the generic CDO collateral manager's job
19 perhaps never changed, but with the knowledge that I have
20 accumulated over many years, is that today, looking back, I
21 realize that Phoenix was doing active work that's totally
22 unheard of in the CDO collateral managers world.

23 Q. And because of that, that the nature of the collateral
24 managers changed, correct?

25 A. I don't understand your statement.

N4KKUSB4

Tang - Cross

1 Q. It's because of Phoenix's work that Triaxx is acting in a
2 different way?

3 A. The entity, Triaxx Asset Management, doesn't register in my
4 mind. I don't understand the context you are asking me the
5 questions against.

6 Q. The entity, Triaxx Asset Management, doesn't exist in your
7 head because, for you, it's the work at Phoenix that's
8 important, correct?

9 A. Phoenix is where I do most of my work related to Triaxx
10 CDOs, yes.

11 Q. For you, it doesn't matter whether it's Triaxx, the CDO
12 issuer, or Triaxx, the asset manager, it's just the Phoenix
13 work that's important?

14 A. To me, Phoenix is doing work trying to make matters better
15 for the Triaxx CDOs.

16 Q. I think we were at paragraph 68 of your declaration.

17 THE COURT: Mr. Savla, we've been going about an hour
18 and a half. If you find a good stopping place in the next
19 ten minutes, you'll let us know.

20 MR. SAVLA: This would actually be a fine time.

21 THE COURT: All right, then.

22 Let us take our afternoon break. Let's be back at
23 approximately 3:20.

24 Dr. Tang, you will remain under oath --

25 THE WITNESS: Yes.

N44KUSB4

1 THE COURT: -- when you get back, and during the
2 break, you are not to discuss your testimony or the facts
3 underlying your testimony with counsel or others.

4 We'll be in recess.

5 (Recess)

6 THE COURT: You may be seated. I see that Dr. Tang is
7 back with us.

8 Mr. Savla, you may continue.

9 BY MR. SAVLA:

10 Q. Now, we were looking at, or I was attempting to find
11 before, the privilege log, and I believe Mr. Gibson -- it was
12 taken out of my binder, but Mr. Gibson has found it.

13 These are the categories that you were relying on to
14 show PRES's work, correct?

15 A. Yes.

16 Q. Now let's go to a different --

17 THE COURT: We're looking at Joint Exhibit 71,
18 correct?

19 MR. SAVLA: We are looking at Joint Exhibit 71.

20 THE COURT: The privilege log?

21 MR. SAVLA: The privilege log.

22 THE COURT: Okay.

23 MS. BEAUMONT: I'm not sure this is in evidence.

24 MR. SAVLA: I will move this Joint Exhibit 71 into
25 evidence.

N44KUSB4

1 THE COURT: Any objection?

2 MS. BEAUMONT: No objection.

3 THE COURT: 71 is admitted.

4 (Joint Exhibit 71 received in evidence)

5 BY MR. SAVLA:

6 Q. Just to be clear, it's Exhibit 71 that you're relying on to
7 show the work that PRES did, correct?

8 A. Yes.

9 Q. So now let's go to Exhibit 3137, which is a multipage,
10 hundred-page, paper document, but we're bringing it up on the
11 screen.

12 MR. VASSANJI: Sorry, your Honor. We took the liberty
13 of making a larger printout because we know your Honor is a fan
14 of paper, so I'm not sure that the version in the binders is
15 particularly legible. We're happy to distribute these --

16 THE COURT: Hold off. Let's let Mr. Savla tell us
17 what this is, because, obviously, a native format Excel
18 spreadsheet is not in native format on paper in my binder, and
19 then we'll figure out whether we want big copies.

20 BY MR. SAVLA:

21 Q. So this is a screen representation of, I believe, what's
22 been produced in paperwork --

23 MR. SAVLA: Am I right, Mr. Vassanji?

24 MR. VASSANJI: Well, this has been produced. It's
25 been attached to Dr. Tang's declaration in paperwork, yes.

N44KUSB4

1 MR. SAVLA: Okay.

2 THE COURT: Okay.

3 So this is what exhibit to Dr. Tang's declaration?

4 MR. SAVLA: It is Exhibit 3137.

5 MR. VASSANJI: Exhibit B, your Honor, to the Tang
6 declaration.

7 THE COURT: Exhibit B to the Tang declaration, which
8 is also Trial Exhibit what?

9 MR. SAVLA: 3137.

10 THE COURT: 3137.

11 And it's in the binder in paper form, it's on the
12 screen in Excel form, and Mr. Vassanji is offering it to us on
13 paper that we can actually read. I'm going to accept that
14 offer.

15 And is 3137 in evidence other than through the
16 witness' direct testimony?

17 MR. SAVLA: My understanding is that it is in
18 evidence.

19 MR. VASSANJI: I don't think it's in evidence, your
20 Honor.

21 MR. LAURIELLO: Your Honor, permission to approach the
22 bench?

23 THE COURT: Please.

24 So is this an exemplar page so we can all read what's
25 in the column?

N44KUSB4

1 MR. LAURIELLO: This is the first page of the
2 document, and then the rest of the document, I think it's fair
3 to say, are supporting pages.

4 MR. VASSANJI: Yes, this is the second tab.

5 THE COURT: All right. I have been handed a blown-up
6 copy, in color, of what I am told is the first two pages of
7 Exhibit 3137.

8 And Dr. Tang has been given the same thing.

9 MR. SAVLA: And I understand it is not in evidence, in
10 fact. So, with the consent of the parties, I move it into
11 evidence, your Honor.

12 MR. VASSANJI: No objection.

13 THE COURT: 3137 is in evidence.

14 (Trial Exhibit 3137 received in evidence)

15 BY MR. SAVLA:

16 Q. So, now, Dr. Tang, this is an incentive fee calculation,
17 correct?

18 A. Correct.

19 Q. And you made this calculation in 2018?

20 A. Maybe 2017 -- '18, yes.

21 Q. Okay. So, looking at the column, the first column, it
22 lists out the CDO, correct?

23 A. Column C is the listing of the name of the CDO, yes.

24 Q. And then column D is the individualized CUSIP?

25 A. Correct.

N44KUSB4

1 Q. Then we have the trust and the class, correct?

2 A. Correct.

3 Q. And then it has a column "Default Date," correct?

4 A. Correct.

5 Q. And def date means default date, correct?

6 A. Correct.

7 Q. And so that's the date that each of these CUSIPs first
8 became designated as defaulted, correct?

9 A. Yes.

10 Q. And they were designated as defaulted by rating agencies?

11 A. Yes.

12 Q. And a designation of defaulted by rating agencies meant
13 that they would never pay off their principal, according to the
14 rating agencies, correct?

15 A. Incorrect.

16 Q. The definition of defaulted, as you understand it, what
17 does it mean?

18 A. In the three Triaxx CDOs, the definition of being in
19 default means the rating agencies have lowered the rating from
20 its original rating to below triple C.

21 Q. Below triple C?

22 A. Yes.

23 Q. And the reason they lowered it to below triple C is it has
24 lower credit quality, correct?

25 A. Triple C would have lower quality than triple B, than

N44KUSB4

1 triple A, yes.

2 Q. And that's lower credit quality, correct?

3 A. Correct.

4 Q. And lower credit quality means it's less likely to pay off
5 its principal, correct, in their estimation?

6 A. In their estimation, it's a relative label to when it is
7 started as an instrument, meaning in 2006/2007, when the CUSIP
8 was constructed, it could have been triple A or double A, but
9 over time, the rating agencies keep monitoring the instrument,
10 and they will update the rating as time go on.

11 THE COURT: Dr. Tang, I'm going to suggest that you
12 move your microphone a little further away from your mouth, and
13 I think we'll get better sound quality that way. Point it at
14 you, but not that close.

15 Thank you.

16 THE WITNESS: Got it.

17 BY MR. SAVLA:

18 Q. So, as of 2018, this is showing the date the various CUSIPs
19 first became defaulted, correct?

20 A. Yes.

21 Q. And, according to the rating agencies, they remained
22 defaulted as of the date you created this document, correct?

23 A. Yes.

24 Q. And you created this document in approximately 2018?

25 A. Yes.

N44KUSB4

1 Q. If we go along, there's a column that says "Actual
2 Liquidation Date," correct?

3 A. Column X.

4 Q. Column X is "Actual Liquidation Date," correct?

5 A. Yes.

6 Q. And that's the date that these securities were sold,
7 correct?

8 A. Yes.

9 Q. And so we see in CUSIPs 1 through 49, they were all sold on
10 the same date, correct?

11 A. Yes.

12 Q. And they were sold on the date of September 8, 2016,
13 correct?

14 THE COURT: Only through 35.

15 THE WITNESS: Yes.

16 MR. SAVLA: Oh, only through 35, thank you.

17 MR. LAURIELLO: Your Honor, if I may, the second page
18 continues the list of CUSIPs to 104.

19 THE COURT: Okay.

20 BY MR. SAVLA:

21 Q. So, through 35, they were sold on 9/8/16, correct?

22 A. Yes.

23 Q. And then a number of others --

24 MR. VASSANJI: Sorry, I think, actually, the date is
25 9/14/16 beginning on --

N44KUSB4

1 THE COURT: No, I think we're ahead of you,
2 Mr. Vassanji.

3 MR. VASSANJI: Thank you.

4 BY MR. SAVLA:

5 Q. So at a certain point, it becomes 9/14/16, correct?

6 A. Yes.

7 Q. Then we have -- then it looks like that stops approximately
8 at line 58?

9 A. Yes.

10 Q. And those sales were pursuant to a court order, correct?

11 A. Yes.

12 Q. And that was the court order from Judge Pauley, correct?

13 A. Yes.

14 Q. Then we look at page 47 -- I'm sorry, excuse me, we look at
15 another range of CUSIPs, and we see sales taking place in
16 August of 2017, correct?

17 A. Yes.

18 Q. And they go from approximately, it looks like, line 62, and
19 it goes through to line 104.

20 Do you see that?

21 A. Yes.

22 Q. And there are various dates in August, correct?

23 A. Yes.

24 Q. And those securities were also sold pursuant to a court
25 order, correct?

N44KUSB4

1 A. Yes.

2 Q. And that court order was from Judge Nathan, correct?

3 A. Yes.

4 Q. So, all these securities we've discussed, on these various
5 lines, they were sold pursuant to a court order, correct?

6 A. Yes.

7 Q. And they were sold because the court determined that the
8 securities had been defaulted for more than three years,
9 correct?

10 A. Yes.

11 Q. And the court determined that, in that situation, the legal
12 documents required the collateral manager to sell?

13 A. Yes.

14 Q. Now, this is an incentive fee calculation, correct?

15 A. Yes.

16 Q. And you did that incentive fee calculation in 2018?

17 A. Approximately.

18 Q. And so in 2018, you knew what an incentive fee was,
19 correct?

20 A. Yes.

21 Q. So now let's go to your deposition, and let's go to
22 page 148. I'm going to read 148, lines 4 through 10.

23 "Q. Now, do you see, on the left-hand side, the incentive fee,
24 a reference to the incentive fee?

25 "A. Yes.

N44KUSB4

1 "Q. Do you know what the incentive fee there referred to?

2 "A. I don't know."

3 MR. VASSANJI: Objection, your Honor. It's entirely
4 unclear, from this cited testimony, what he's referring to or
5 how this is impeachment.

6 THE COURT: I, too, was wondering. The left side of
7 what?

8 MR. SAVLA: Okay.

9 BY MR. SAVLA:

10 Q. So let's go to the prior page, 147. And you see at lines 9
11 through 13, I'm referring you to an invoice.

12 Do you see that?

13 And then below that, I say, at lines 14 to 20: For
14 the sake of the record, this is a Phoenix invoice and payment
15 instruction, an invoice date of November 30, 2017, with the
16 Bates stamp USBANK 1550.

17 A. Do you have the actual invoice?

18 Q. I'm sure we can have that pulled up.

19 THE COURT: Are you able to put your hands on it,
20 Mr. Savla?

21 MR. SAVLA: It is document Bates stamp USBANK 1550.

22 THE COURT: Bates stamped, I take it, in the 2018
23 litigation, not here?

24 MR. SAVLA: Correct. But those documents have been
25 produced in this action.

N44KUSB4

1 THE COURT: I don't doubt that. We just have to
2 figure out which ones.

3 MR. SAVLA: Would the Court indulge me with a
4 one-minute break so we can find the document?

5 THE COURT: Okay.

6 MR. SAVLA: Thank you.

7 THE COURT: But I'm going to sit here and glower at
8 you while you're looking for it.

9 (Pause)

10 MR. SAVLA: So, apparently, we're not able to get the
11 document easily, so --

12 THE COURT: So you'll move on?

13 MR. SAVLA: -- we'll move on.

14 BY MR. SAVLA:

15 Q. Let me read to you other lines. 148, line 19:

16 "Q. Do you know how the incentive fee is calculated?

17 "A. I don't know."

18 And you said that, right?

19 A. Yes. Again, I don't know what the context was.

20 MR. SAVLA: Okay. Thank you.

21 I'm going to, with thanks to the Court, turn it over
22 to Mr. Lauriello for the remainder of the questioning.

23 THE COURT: All right. Thank you, Mr. Savla.

24 Mr. Lauriello, you may examine.

25 MR. LAURIELLO: Thank you, your Honor.

N4KKKUSB4

Tang - Cross

1 CROSS-EXAMINATION

2 BY MR. LAURIELLO:

3 Q. Good afternoon, Dr. Tang. My name is Anthony Lauriello,
4 and I also represent PIMCO.

5 A. Good afternoon.

6 Q. You testified, in paragraph 32 of your declaration, that on
7 September 15, 2014, PRES submitted invoices for 11.75 million,
8 correct?

9 A. Can I see it on the screen?

10 Q. Yes.

11 Please go to paragraph 32 of your declaration.

12 MR. LAURIELLO: And, Mr. Gibson, can you please pull
13 that up?

14 It's the wrong paragraph number. One second.

15 Q. Please turn to paragraph 62.

16 (Pause)

17 A. Yes.

18 Q. And you reference Trial Exhibit 3497 in this paragraph,
19 correct?

20 A. Yes.

21 Q. Please turn to tab 3 in Volume I of your binder.

22 MR. LAURIELLO: And, Mr. Gibson, can you please put
23 Exhibit 3497 on the screen.

24 I believe that's Exhibit 3297. Can you please put
25 Exhibit 3497 on the screen.

N4KKKUSB4

Tang - Cross

1 Q. Is this the trial exhibit referenced in your declaration,
2 Dr. Tang?

3 A. Is there more to this? I'm only seeing one page.

4 Q. We'll get to that, but if you see the sticker in the top
5 right-hand corner, do you see this is Trial Exhibit 3497?

6 A. Yes.

7 Q. That is the exhibit referenced in paragraph 62 of your
8 declaration?

9 A. Yes.

10 THE COURT: Let him cross-check with the binder to
11 make sure that's what he meant to reference.

12 It's behind tab 3 of your first binder, Volume I.

13 (Pause)

14 THE WITNESS: I don't see the 3497 in the binder. Is
15 it missing?

16 THE COURT: Would you like to approach, Mr. Lauriello?

17 MR. LAURIELLO: Yes, your Honor.

18 (Pause)

19 THE COURT: Ah, wrong binder.

20 THE WITNESS: I see it.

21 BY MR. LAURIELLO:

22 Q. And, Dr. Tang, is this the exhibit referenced in your
23 declaration?

24 A. Yes.

25 MR. LAURIELLO: Your Honor, I'd like to move this into

N4KKKUSB4

Tang - Cross

1 evidence.

2 MR. VASSANJI: No objection.

3 THE COURT: 3497 is in evidence.

4 (Trial Exhibit 3497 received in evidence)

5 BY MR. LAURIELLO:

6 Q. Please turn to the page with the Bates stamp -- Dr. Tang,
7 do you see that there is a Bates stamp in the bottom right-hand
8 corner of this document, starting in TRI?

9 A. 0091650?

10 Q. Yes. That's what lawyers call a Bates stamp.

11 Can you please turn to the page Bates stamped 91661.

12 MR. LAURIELLO: This is a rather large document, so,
13 Mr. Gibson, please put that page on the screen.

14 Q. If we go back for just one second to your declaration, in
15 paragraph 62, you testified that true and correct copies of
16 charts supporting the invoices on September 15, 2014, can be
17 found at Triaxx 0091656 through 661.

18 Do you see that?

19 A. Yes.

20 MR. LAURIELLO: Can we please go back to Triaxx the
21 Bates stamp ending in 661.

22 Q. And this is one of those pages, correct, Dr. Tang?

23 A. Yes.

24 Q. Do you see this list -- the title of this chart is
25 "Estimated Benefit from Private Negotiations - Triaxx 2007-1"?

N4KKKUSB4

Tang - Cross

1 A. Yes.

2 Q. If we turn to the page ending in this document to Bates
3 stamp 91658, do you see that it defines the private
4 negotiation?

5 A. Yes.

6 Q. Do you see the private negotiation is defined as Triaxx
7 successful negotiation of a payout of \$69 million?

8 A. Yes.

9 Q. Please turn back to 91661.

10 This chart lists 11 securities, correct?

11 A. Yes.

12 Q. And do you see there's a column that says "Estimated
13 Benefit"?

14 A. Yes.

15 Q. Is the estimated benefit what Phoenix calculated for each
16 of these securities, the benefit it received from that
17 \$69 million payment?

18 A. This was a long time ago. I believe so.

19 Q. And it's prorated per security?

20 A. I believe it's by the notional amount.

21 Q. Can you please turn to paragraph 61 of your declaration.

22 Do you see that you testified, "To determine whether
23 PRES was entitled to an incentive fee, PRES prorated the
24 recovery amount over the number of the Triaxx CDOs' RMBS trusts
25 at issue in the action"?

N4KKKUSB4

Tang - Cross

1 A. Yes, I see it.

2 Q. Does that refresh your recollection that the estimated
3 benefit is the prorated benefit for each of the residential
4 mortgage-backed securities?

5 A. Yes.

6 Q. Please turn back to 91661.

7 Do you see below the chart, it says, "Number of
8 positions with more than \$500,000 benefit"?

9 A. Yes.

10 Q. And do you see that there are eight that are incentive
11 fee-eligible?

12 A. Yes.

13 Q. So that means 8 of these 11 securities could be charged the
14 incentive fee?

15 A. That's my understanding.

16 Q. Does that mean 8 of these 11 securities were charged the
17 incentive fee?

18 A. I assume, yes.

19 Q. And that totals to \$2 million in aggregate, correct?

20 A. Yes.

21 Q. Do you see the sixth listed security, with the CUSIP
22 0219HAM2?

23 A. Yes.

24 Q. Do you see there is an estimated benefit of \$568,193?

25 A. I do.

N4KKKUSB4

Tang - Cross

1 Q. For that CUSIP, Phoenix earned an incentive fee of
2 \$250,000, right?

3 A. Correct.

4 Q. And it was also able to charge a monthly activist
5 implementation fee of up to \$250,000, correct?

6 A. Yes.

7 Q. So for this CUSIP that had a credit improvement of
8 \$568,193, Phoenix charged \$500,000?

9 A. From this narrow angle, yes, but this is a hundred
10 percent -- a thousand percent misleading because the CUSIP was
11 a \$25 million issue. This benefit of 568,000 is a tiny
12 fraction of all the benefits that accrued to Triaxx CDO
13 investors. It's a tiny fraction.

14 Q. And do you see the tenth security with the CUSIP 12544CAT8
15 was improved by \$564,931?

16 A. Yes.

17 Q. Please turn to the previous page, which ends in the Bates
18 stamp 660.

19 Do you see that this is substantially the same type of
20 chart, but for the Triaxx 2006-2 CDO?

21 A. Yes.

22 Q. Do you see there are 19 positions listed with a more than
23 \$500,000 benefit?

24 A. Yes.

25 Q. And that entitled Phoenix to an incentive fee of

N4KKKUSB4

Tang - Cross

1 \$4.75 million, correct?

2 A. Yes.

3 Q. And please go to the previous page, which ends in 659.

4 Do you see that's the chart for 2006-1?

5 A. Yes.

6 Q. And there are 18 positions listed with more than \$500,000
7 benefit, right?

8 A. Yes.

9 Q. That entitled Phoenix to an incentive fee of \$4.5 million,
10 correct?

11 A. Yes.

12 Q. Please turn to paragraph 64 of your declaration.

13 Do you see in the last sentence, consistent with what
14 we just saw, that Phoenix was entitled to fees of 4.5 and
15 4.75 million for 2006-1 and 2006-2 respectively?

16 A. Yes.

17 Q. But do you see also in paragraph 64 that you state that
18 Phoenix actually invoiced the 2006-1 CDO for 4.75 million and
19 the 2006-2 CDO for 5 million?

20 A. Yes.

21 Q. You do not know why that discrepancy exists, correct?

22 A. I do not know.

23 Q. Did Phoenix ever refund \$250,000 each to both Triaxx 2006-1
24 and 2006-2?

25 A. I do not know.

N4KKKUSB4

Tang - Cross

1 Q. Please go to paragraph 62 of your declaration again.

2 You state that PRES charged a total of 11.75 million
3 on September 15, 2014, correct?

4 A. Yes.

5 Q. That was comprised of a \$4.75 million to 2006-1, the
6 \$5 million charged to 2006-2, and the \$2 million charged to
7 2007-1, right?

8 A. Yes.

9 Q. You testified earlier today that you were in the trenches
10 doing the work for Phoenix, correct?

11 A. Yes.

12 Q. From that perspective, all the Triaxx CDOs meant the same
13 to you, correct?

14 A. It's not an important distinction in my mind, correct, when
15 I'm doing the work.

16 Q. So when you're analyzing the loans of a given CUSIP, it
17 doesn't matter which Triaxx CDO is invested in that CUSIP,
18 correct?

19 A. Correct.

20 Q. And the work is the same?

21 A. It is the same.

22 Q. Please turn back to Exhibit 3497. And please go to the
23 page ending in 91657.

24 Do you see this is a chart that shows the estimated
25 benefit from the previous negotiations with Bank of America

N4KKKUSB4

Tang - Cross

1 across all three Triaxx CDOs?

2 A. It's a part of it.

3 Q. Do you see for some of the RMBS CUSIPs, more than one
4 Triaxx was an investor?

5 A. Yes.

6 Q. For example, please look at line 35, which is the CUSIP
7 12544AAT2.

8 Do you see that?

9 A. Yes.

10 Q. There is an estimated benefit of more than \$500,000 for
11 each of the three CDOs on this one CUSIP, correct?

12 A. Yes.

13 Q. Please go to the page ending in Bates 1659.

14 This is the chart for 2006-1, correct?

15 A. Yes.

16 Q. Do you see that CUSIP 12544AAT2 is listed on line 18?

17 A. Yes.

18 Q. And do you see it as having an estimated benefit of over
19 around \$1.2 million?

20 A. Yes.

21 Q. So PRES charged Triaxx 2006-1 a \$250,000 incentive fee for
22 this CUSIP, correct?

23 A. Yes.

24 Q. And PRES was also able to charge Triaxx 2006-1 up to
25 \$250,000 in monthly activist implementation fees, correct?

N4KKKUSB4

Tang - Cross

1 A. Yes.

2 Q. Please turn to the next page, with Bates stamp 1660.

3 Do you see that this is the same chart for 2006-2?

4 A. Yes.

5 Q. If we look at line 20, we see CUSIP 12544AAT2, correct?

6 A. Yes.

7 Q. That is the same CUSIP we looked at before, right?

8 A. Correct.

9 Q. And we see that it has a benefit of around 2.3 million,
10 correct?

11 A. Correct.

12 Q. So PRES charged Triaxx 2006-2 a \$250,000 incentive fee for
13 this CUSIP, correct?

14 A. Yes.

15 Q. And PRES was also able to charge Triaxx 2006-2 up to
16 \$250,000 in monthly activist implementation fees, right?

17 A. Yes.

18 Q. Please turn to the next page, ending in Bates stamp 1661.

19 You see this is the chart for Triaxx 2007-1?

20 A. Yes.

21 Q. Do you see that CUSIP 12544AAT2 is on line 9?

22 A. Yes.

23 Q. And that is identical to the CUSIP we saw for the 2006-2
24 and 2006-1?

25 A. Yes.

N4KKKUSB4

Tang - Cross

1 Q. And PRES was able to charge Triaxx 2007-1 up to a \$250,000
2 incentive fee for this CUSIP, correct?

3 A. Correct.

4 Q. And it was also able to charge Triaxx 2007-1 up to \$250,000
5 in monthly activist implementation fees, right?

6 A. Correct.

7 Q. So across all three CDOs, Phoenix was able to charge
8 \$500,000 each for reviewing the loans in CUSIP 12544AAT2,
9 right?

10 A. Correct.

11 Q. And that's an aggregate amount of \$1.5 million, correct?

12 A. Yes.

13 Q. So it's fair to say that when more than one of the Triaxx
14 CDOs invested in a single CUSIP, that Phoenix would bill each
15 CDO separately, right?

16 A. Yes.

17 Q. Please turn back to the page ending in 091657.

18 Do you see that Phoenix billed more than one CDO for
19 the CUSIP on line 4?

20 A. Can you repeat your question?

21 Q. Can you see that Phoenix billed more than one CDO for the
22 CUSIP listed on line 4?

23 A. Yes.

24 Q. And the same is true for line 5?

25 A. Yes.

N4KKKUSB4

Tang - Cross

1 Q. And line 7?

2 A. Yes.

3 Q. And line 11?

4 A. Yes.

5 Q. And line 18?

6 A. Yes.

7 Q. And line 22?

8 A. Yes.

9 Q. And line 32?

10 A. Yes.

11 Q. And line 34?

12 A. Yes.

13 Q. On line 37 and 38 as well?

14 A. Yes.

15 Q. Please go back to your declaration --

16 MR. VASSANJI: I don't think line 37 reflects what
17 Mr. Lauriello is saying. Line 37 appears --

18 THE COURT: Line 37 appears to be a double dip, not a
19 triple dip.

20 MR. VASSANJI: Actually, I believe, your Honor, it's
21 total benefit, and then the total benefit is triple, to just
22 07 --

23 THE COURT: I'm sorry, 37?

24 MR. VASSANJI: 37.

25 MR. LAURIELLO: Mr. Vassanji has me on that one.

N4KKKUSB4

Tang - Cross

1 Line 37 is only billed once.

2 MR. VASSANJI: As well, I should note that line 38,
3 the number is less than 500,000, so it does not appear eligible
4 for what Mr. Lauriello is suggesting.

5 THE COURT: All right. I'm following.

6 MR. VASSANJI: 32 as well, your Honor, I think there
7 are a few of the highlights on the page that are incorrect.

8 THE COURT: I got it. Thanks.

9 MR. LAURIELLO: I apologize for missing some of those
10 highlights.

11 THE COURT: I will go by the underlying evidence and
12 not the highlighting supplied by counsel.

13 MR. LAURIELLO: Thank you.

14 BY MR. LAURIELLO:

15 Q. Please go to paragraph 65 in your declaration.

16 You testified that PRES made an incentive fee payment
17 of \$6.25 million on June 30, 2016, resulting out of litigation
18 recoveries, right?

19 A. Yes.

20 Q. And you state that the true and correct copies of the
21 invoices are found in Trial Exhibit 3487, correct?

22 A. Yes.

23 MR. LAURIELLO: And with apologies to the Court, Trial
24 Exhibit 3487 is not in the binder, but I'll ask Mr. Gibson to
25 please pull it up.

N4KKKUSB4

Tang - Cross

1 Q. Dr. Tang, is this the Exhibit 3487 referenced in your
2 declaration?

3 THE WITNESS: Can you flip a couple of more pages so
4 that I can see?

5 (Pause)

6 THE WITNESS: Yes.

7 MR. LAURIELLO: And I understand there's not an
8 exhibit stamp - I apologize on that - but I'll represent this
9 is Exhibit 3487, and when I'm asking to move Exhibit 3487 into
10 evidence, I am asking to move the actual exhibit-stamped
11 document.

12 THE COURT: This one has not been admitted so far?

13 MR. LAURIELLO: It has not, but I would like to move
14 it into evidence, your Honor.

15 THE COURT: Ms. Almonte, could you fetch for me a
16 paper copy of 3487.

17 MR. LAURIELLO: I'm informed by the TAM parties that
18 this is, in fact, already in evidence.

19 THE COURT: Ah, that makes things easier.

20 All right. So you don't need to fetch me a paper
21 copy, Ms. Almonte.

22 You may proceed.

23 BY MR. LAURIELLO:

24 Q. Can you please to turn page 2 of Exhibit 3487.

25 THE COURT: Well, he can't really turn to it, can he?

N4KKKUSB4

Tang - Cross

1 MR. LAURIELLO: Mr. Gibson, can you please --

2 THE COURT: Can we supply a paper copy to the witness?

3 MR. LAURIELLO: Unfortunately, your Honor, I don't
4 have a paper copy.

5 THE COURT: Somebody in this room full of lawyers has
6 a paper copy, I'm sure, of 3487.

7 MS. BEAUMONT: We have one in our anteroom.

8 THE COURT: That would be great.

9 My clerk is giving me a paper copy as well. I'm sort
10 of a paper person.

11 MR. LAURIELLO: I understand, your Honor. And we
12 apologize, there were some issues printing this binder, as you
13 may have gathered.

14 THE COURT: It's late in the week.

15 (Pause)

16 THE COURT: While we're waiting for Exhibit 3487 to
17 appear -- and I don't think we need to excuse Dr. Tang for
18 this -- do you have an estimate for how much longer you have,
19 Mr. Lauriello?

20 MR. LAURIELLO: As an estimate, I'd say around
21 30 minutes.

22 THE COURT: All right. So we'll get through you
23 today, I think, and that means we're going to have to ask
24 Dr. Tang to come back tomorrow.

25 MS. WITYK: Your Honor, may I approach with a copy of

N4KKKUSB4

Tang - Cross

1 3487?

2 THE COURT: You promise it's really 3487?

3 MS. WITYK: It's stamped and everything.

4 THE COURT: You may approach.

5 All right. The witness and the Court have each been
6 furnished with a paper copy of Trial Exhibit 3487, which has
7 been previously admitted into evidence and which is a multipage
8 document.

9 MR. LAURIELLO: My thanks to Ms. Almonte and
10 Ms. Wityk.

11 BY MR. LAURIELLO:

12 Q. Please now turn to page 2 of Trial Exhibit 3487.

13 Do you see, in the second paragraph, the exhibit
14 states, Triaxx received an initial payment of \$69 million (the
15 first recovery), and, in addition, Triaxx was able to receive
16 an additional \$35 million if Triaxx had not received a
17 distribution from the Article 77 proceeding.

18 THE COURT: I think you meant to say was eligible to
19 receive, not was able to receive.

20 MR. LAURIELLO: Thank you, your Honor.

21 THE WITNESS: Yes.

22 Q. Then it states, "On June 31, 2016, Triaxx had not received
23 any distribution payment pursuant to the Article 77
24 proceeding," right?

25 A. Yes.

N4KKKUSB4

Tang - Cross

1 Q. And, therefore -- it then goes on to say Triaxx then
2 invoked its rights to receive \$35 million from Bank of America?

3 Do you see that?

4 A. Yes.

5 Q. Do you see, later on it says, Triaxx eventually received
6 around \$34 million from the Article 77 proceeding?

7 A. Yes.

8 Q. And then Triaxx had to reimburse that around \$34 million
9 amount of the \$35 million amount from Bank of America, correct?

10 A. Yes.

11 Q. Please go down to the portion of this letter that says,
12 "The Fourth Recovery."

13 Do you see it states that on or about June 30, 2016,
14 Triaxx received a \$34 million recovery?

15 A. Yes.

16 Q. If you go to the next page, please, do you see that there
17 are recommended wire transfers to Phoenix coming out of that
18 \$34 million recovery?

19 A. Yes.

20 Q. Do those amounts aggregate to \$6.25 million?

21 A. Yes.

22 Q. So is this the \$6.25 million referred to in your
23 declaration?

24 A. Yes.

25 Q. Please go to paragraph 66 of your declaration.

N4KKKUSB4

Tang - Cross

1 Do you see that you stated that Triaxx 0014404 of
2 Trial Exhibit 3487 shows the incentive fee calculation for the
3 \$6.25 million payment?

4 A. Yes.

5 Q. Please turn to that page, with the Bates stamp 14404.

6 THE COURT: It's towards the back.

7 MR. VASSANJI: Is that going to be shown on the screen
8 for the benefit of the rest of us?

9 MR. LAURIELLO: I'd ask Mr. Gibson -- this is the same
10 exhibit, Exhibit 3487, with the Bates stamp 14404. And I will
11 just wait until everyone's on the same page.

12 Thank you, Mr. Gibson, and apologies for being hard to
13 follow.

14 He doesn't have the one with attachments?

15 Your Honor --

16 THE COURT: We're going to the ELMO, are we?

17 MR. LAURIELLO: Yes.

18 THE COURT: Things must be desperate.

19 MR. LAURIELLO: Today is not my day for documents.

20 Your Honor, because I do not have a paper copy of this
21 exhibit, may I ask, unfortunately, to take yours or the
22 witness' so I can show it on the ELMO?

23 THE COURT: You can't mine because I've scribbled on
24 it.

25 MR. LAURIELLO: Okay.

N4KKKUSB4

Tang - Cross

1 THE COURT: And I hesitate to ask the witness to give
2 up his paper copy. It looks like somebody thinks they can get
3 us another paper copy.

4 MS. WITYK: We'll search for another one, your Honor.

5 THE COURT: All right.

6 (Pause)

7 MS. WITYK: I must thank opposing counsel again.

8 THE COURT: Ms. Wityk has come to the rescue.

9 MS. WITYK: The credit should go to Mr. Philbin.

10 THE COURT: I think credit goes to the whole team.

11 MR. LAURIELLO: Let's try again.

12 BY MR. LAURIELLO:

13 Q. Do you see that this is a page Bates stamped TRI 14404?

14 A. Yes.

15 Q. Do you see it is titled "Estimated Benefit from Private
16 Negotiations with Bank of America"?

17 A. Yes.

18 MR. LAURIELLO: And, Mr. Gibson, can you please put on
19 the screen Exhibit 3487, which I know we do have, with the page
20 ending in 1658 for just a moment. 3487.

21 1658.

22 THE COURT: Triaxx estimated benefits from the
23 8.5 billion? To make sure I'm on the right page.

24 MR. LAURIELLO: I believe so. I believe we have
25 previously looked at this. If we can just go back to the ELMO,

N4KKKUSB4

Tang - Cross

1 please.

2 Q. Do you see Triaxx Trial Exhibit 3487 defines, as we've
3 looked before, the private negotiation as the amount that
4 Triaxx successfully negotiated as a payment of \$69 million?

5 A. Yes.

6 Q. Do you see under there it states "Settlement Payment"?

7 A. Where?

8 Q. In the next paragraph. It says "Settlement Payment" on the
9 same page.

10 A. Yes.

11 Q. The exhibit states, "Under the terms of the settlement
12 agreement, Triaxx has been guaranteed a minimum of \$35 million
13 in recoveries from the allocation of the \$8.5 billion Article
14 77 proceeding."

15 Do you see that?

16 A. Yes.

17 Q. Was Phoenix involved in the Article 77 proceeding?

18 A. I believe so.

19 Q. Do you know who John Moon is?

20 A. Yes.

21 Q. If Mr. Moon were to testify that Phoenix was not involved
22 in the Article 77 proceeding, would you believe him?

23 MR. VASSANJI: Objection.

24 THE COURT: I'll allow it.

25 A. I would trust whatever John Moon says, but when I answer

N4KKKUSB4

Tang - Cross

1 the question whether Triaxx was involved with the Article 77
2 proceeding, I don't know the context you're asking him the
3 question. The reason I answer yes is because I know exactly
4 what the Article 77 proceeding was, and I am aware of Bank of
5 America paid Triaxx money out of the Article 77 proceeding and
6 with Phoenix help, Triaxx was objecting to the 8.5 billion
7 global settlement.

8 So, from my understanding of those facts, I made the
9 statement that Triaxx was involved. That could be different
10 definition than John Moon's.

11 Q. Understood.

12 Let's turn back to Exhibit 3487, page 14404, which is
13 shown on the ELMO.

14 Do you see, as before, that some CUSIPs have more than
15 one CDO investing in them?

16 A. Yes.

17 Q. And some of these CUSIPs have multiple CDOs receiving a
18 benefit of more than \$500,000, right?

19 A. Yes.

20 Q. And that includes line 5, correct?

21 A. Yes.

22 Q. And line 8?

23 A. Yes.

24 Q. For those CUSIPs, multiple CDOs were paid \$250,000
25 incentive fees, right?

N4KKKUSB4

Tang - Cross

1 A. Correct.

2 Q. Please look at paragraph 71 of your declaration.

3 And I will ask Mr. Gibson to bring that on the screen.

4 Thank you.

5 You testified that you calculated in 2018 that there
6 was a total benefit of \$725 million from the sale of securities
7 in 2016 and 2017, correct?

8 A. Yes.

9 Q. And those were the court-ordered sales that Mr. Savla was
10 discussing with you before, correct?

11 A. Yes.

12 Q. And you calculated that PRES was owed \$18.25 million in
13 incentive fees for those sales?

14 A. Yes.

15 Q. And you testified that this calculation can be seen in
16 Exhibit 3137, correct?

17 A. Yes.

18 MR. LAURIELLO: Can we please turn to Exhibit 3337.
19 This is the Excel, and I'm going to ask Mr. Gibson to put it on
20 the screen, and we're going to be interacting with the native
21 Excel, so apologies for those who prefer paper.

22 Q. As you testified earlier today, columns B through F
23 identify the CUSIP, correct?

24 A. Yes.

25 Q. And the trust and the class and the default date?

N4KKKUSB4

Tang - Cross

1 A. Yes.

2 Q. Please move to the section of the chart titled "Liquidation
3 Proceeds If Sold In March 2011."

4 Do you see in the highlighted column V that it lists
5 liquidation proceeds if sold on March 25th or 3/25/11?

6 A. Yes.

7 Q. This is an estimate of what the CUSIP would have been sold
8 at if it had been liquidated on March 25, 2011, right?

9 A. Yes.

10 Q. When these residential mortgage-backed securities are sold,
11 there is typically an auction, correct?

12 A. Yes.

13 Q. So the actual price on March 25, 2011, could have been
14 higher, correct?

15 A. It could have been a lot lower, as well, because we have
16 been very conservative in terms of giving it the benefit of the
17 doubt when the pricing happened in 2011.

18 Q. But it's fair to say you couldn't know for certain what the
19 price would have been if it was liquidated on March 25, 2011,
20 right?

21 A. I was pretty certain 1142 will be a cap but not a floor.

22 Q. But that is still your best estimate, correct?

23 A. Correct.

24 Q. Do you see column X is actual liquidation date?

25 A. Yes.

N4KKKUSB4

Tang - Cross

1 Q. That is the date that the residential mortgage-backed
2 security is actually sold, right?

3 A. Correct.

4 Q. And then in column AA, do you see total principal
5 collections?

6 A. Yes.

7 Q. Is that the total principal received on each respective
8 residential mortgage-backed security from March 25, 2011, to
9 the actual liquidation date?

10 A. Yes.

11 Q. And then the next column is actual liquidation proceeds?

12 A. Yes.

13 Q. And that is the amount the residential mortgage-backed
14 securities sold for on the actual liquidation date, right?

15 A. Yes.

16 Q. And the last column is total principal proceeds.

17 If Mr. Gibson could click, for the first CUSIP we see,
18 which is line 10 of the Excel, in the column "Total Principal
19 Proceeds," we can see that this is a formula for the sum of the
20 total principal collections and the actual liquidation
21 proceeds, right?

22 A. Yes.

23 Q. And so this column represents the value for the residential
24 mortgage-backed security you calculated on the liquidation
25 date, right?

N4KKKUSB4

Tang - Cross

1 A. Yes.

2 Q. Please move to the next section of the Excel, titled
3 "Position Level Benefits."

4 Do you see that column AE is "Principal Gained from
5 Delayed LQDTN"?

6 A. Yes.

7 Q. And that is short for liquidation, correct?

8 A. Yes.

9 MR. LAURIELLO: If Mr. Gibson again could click on the
10 for the first CUSIP in line 10 to see the formula.

11 Q. Do you see that the principal gain from delayed liquidation
12 is taken by simply subtracting the total principal proceeds and
13 netting out the liquidation proceeds if sold on March 25, 2011?

14 A. Yes.

15 Q. Do you see in row 5 that there is a number \$725 million?

16 A. Yes.

17 Q. Is that the sum of the principal gain from delayed
18 liquidation?

19 A. Yes.

20 Q. Does that correspond to the \$725 million in your
21 declaration?

22 A. Yes.

23 Q. So that is the sum of the total principal proceeds simply
24 netted out -- let me try again.

25 The \$725 million is the sum of for every RMBS of the

N4KKKUSB4

Tang - Cross

1 net of the total principal proceeds for the actual liquidation
2 date minus the liquidation proceeds if sold on March 25, 2011?

3 A. Yes.

4 Q. Do you see the next column is "Position With Over
5 \$500,000"?

6 A. Yes.

7 MR. LAURIELLO: If Mr. Gibson can click for the first
8 CUSIP on that, to see the formula.

9 Q. Do you see this is a simple Excel formula where it is 1 if
10 the principal gained from delayed liquidation is over \$500,000?

11 A. Yes.

12 THE COURT: I'm sorry, where am I seeing the formula?

13 MR. LAURIELLO: The formula is located on the Excel
14 above all of the columns.

15 THE COURT: Equal 1F, et cetera?

16 MR. LAURIELLO: Yes.

17 THE COURT: Thank you.

18 Q. If we move on to column AH, do you see that's B of A
19 incentive paid?

20 A. Yes.

21 Q. Do you see those numbers are hard-coded?

22 A. Yes.

23 Q. Did you put in a 1 for each of the securities that had
24 already been paid an incentive fee for that CDO from the Bank
25 of America litigation?

N4KKKUSB4

Tang - Cross

1 A. It's from the fourth recovery, 25, I believe. The
2 6.25 million.

3 Q. But to back up, the purpose of this column is to identify
4 which residential mortgage-backed securities already had an
5 incentive fee, correct?

6 A. Yes.

7 Q. When I say that it's to see if the residential
8 mortgage-backed security already had an incentive fee, it's for
9 a specific CDO, correct?

10 A. Yes.

11 MR. LAURIELLO: Can we please click on the next
12 column, AI, which is position 250K eligible. And if we can
13 click for row 10, to see the formula.

14 Q. And I admit I am not very good at Excel, but my best
15 understanding of this formula, Dr. Tang, is that if the
16 position with over \$500,000 is 1, and the Bank of America
17 incentive paid is zero, then this column will show a 1,
18 correct?

19 A. Yes.

20 Q. Or, in other words, if a security has over \$500,000 in
21 principal gained from delayed liquidation and has not already
22 had a Bank of America incentive fee paid, there will be a 1 in
23 this column?

24 A. Correct.

25 Q. Can you please move on to the next column, titled "The

N4KKKUSB4

Tang - Cross

1 Number," column AJ, and can we please see the formula for that.

2 Do you see that formula simply multiplies the position
3 250K eligible times 250,000?

4 A. Yes.

5 Q. So if there is a 1 in the position 250,000 eligible, then
6 the number will be \$250,000 in this column?

7 A. Yes.

8 Q. Do you see that there is a sum for this column on line 5?

9 A. Where am I looking?

10 Q. We're in column AJ, row 5.

11 A. Yes.

12 Q. And that sum is \$18.25 million?

13 A. Yes.

14 Q. And that is the \$18.25 million that you billed for
15 incentive fees for these sales?

16 A. Yes.

17 Q. Can you please go to line 54 in this Excel. And I will ask
18 Mr. Gibson to please scroll left so we can see the CUSIP
19 information.

20 Sorry, can we please go to line 63 of this Excel,
21 which is the 54th CUSIP listed. So just so everyone's on the
22 same page, we're on line 63 of the Excel, which is the 54th
23 CUSIP listed in this exhibit.

24 Do you see that, Dr. Tang?

25 A. Yes.

N4KKKUSB4

Tang - Cross

1 Q. And do you see the CUSIP is 40431HAC1?

2 A. Yes.

3 Q. Do you see that Triaxx 2006-2 held a 25 percent position?

4 A. Yes.

5 Q. And do you see that it was liquidated on August 10, 2017?

6 A. Correct.

7 Q. So Triaxx 2006-2 earned a \$250,000 incentive fee on this
8 CUSIP, right?

9 A. Yes.

10 Q. Can we please now look at line 73 and the 64th CUSIP
11 listed.

12 Do you see this is also CUSIP 40431HAC1?

13 A. Yes.

14 Q. Do you see that Triaxx 2007-1 holds a 75 percent position
15 in this CUSIP?

16 A. Yes.

17 Q. It was liquidated on August 10, 2017?

18 A. Yes.

19 Q. So both Triaxx 2006-2 and Triaxx 2007-1 were invoiced at
20 \$250,000 incentive fee for the liquidation of this CUSIP on
21 August 10, 2017, right?

22 A. Yes.

23 Q. Dr. Tang, today we have seen charts showing the CUSIPs that
24 underlay the fees Phoenix charged for incentive fees, right?

25 A. Yes.

N4KKKUSB4

Tang - Cross

1 Q. Earlier today, you testified that there was a CUSIP
2 tracking chart that similarly showed the CUSIPs charged for due
3 diligence, the monthly due diligence fee -- strike that, the
4 monthly activist implementation fees, correct?

5 A. Yes.

6 Q. And those are the fees of \$10,000 per month per security,
7 right?

8 A. Yes.

9 Q. That are capped at \$250,000?

10 A. Yes.

11 Q. And I would need that chart to see which of those
12 securities were charged by multiple CDOs, right?

13 A. I assume.

14 Q. And I would need that chart to see what the estimated
15 benefit is for each of those CDOs -- for each of those
16 residential mortgage-backed securities, correct?

17 A. Correct.

18 MR. LAURIELLO: Thank you. I have no further
19 questions.

20 THE COURT: It is now 4:31. Your timing was very
21 good.

22 Will there be more questions for Dr. Tang tomorrow
23 morning?

24 MS. BUCKEL: Yes, your Honor.

25 THE COURT: All right.

N4KKKUSB4

Tang - Cross

1 So, Dr. Tang, we will excuse you for the evening. We
2 will see you back here at 9:30 tomorrow morning.

3 You will remain under oath. Please do not discuss
4 your testimony or the underlying facts with counsel or anyone
5 else until you're back on the stand.

6 You may be excused.

7 THE WITNESS: Thank you.

8 (Witness temporarily excused)

9 THE COURT: Counsel, stay behind for a moment.

10 (Pause)

11 THE COURT: Do we have any further business, counsel?

12 I will see you all at 9:30 tomorrow.

13 (Adjourned to April 21, 2023 at 9:30 a.m.)

14 * * *

INDEX OF EXAMINATION

| | |
|-----------------|------|
| Examination of: | Page |
|-----------------|------|

NICHOLAS CALAMARI

| | |
|--------------------------------|-----|
| Cross By Mr. Lorenzo | 633 |
|--------------------------------|-----|

| | |
|-------------------------------|-----|
| Cross By Mr. Ledley | 697 |
|-------------------------------|-----|

| | |
|------------------------------------|-----|
| Redirect By Ms. Beaumont | 698 |
|------------------------------------|-----|

| | |
|----------------------------------|-----|
| Recross By Mr. Lorenzo | 708 |
|----------------------------------|-----|

SIGURGEIR JONSSON

| | |
|----------------------------------|-----|
| Direct By Mr. Vassanji | 712 |
|----------------------------------|-----|

| | |
|----------------------------|-----|
| Cross By Ms. Bui | 713 |
|----------------------------|-----|

MINGSUNG TANG

| | |
|----------------------------------|-----|
| Direct By Mr. Vassanji | 745 |
|----------------------------------|-----|

| | |
|------------------------------|-----|
| Cross By Mr. Savla | 746 |
|------------------------------|-----|

| | |
|----------------------------------|-----|
| Cross By Mr. Lauriello | 795 |
|----------------------------------|-----|

PLAINTIFF EXHIBITS

| | |
|-------------|----------|
| Exhibit No. | Received |
|-------------|----------|

| | |
|----------------|-----|
| 3137 | 787 |
|----------------|-----|

JOINT EXHIBITS

| | |
|-------------|----------|
| Exhibit No. | Received |
|-------------|----------|

| | |
|----------------|-----|
| 1067 | 654 |
|----------------|-----|

| | |
|----------------|-----|
| 3203 | 660 |
|----------------|-----|

| | |
|----------------|-----|
| 1126 | 662 |
|----------------|-----|

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|----------------|-----|
| 1130 | 664 |
|----------------|-----|

| | |
|----------------|-----|
| 1162 | 667 |
|----------------|-----|

| | |
|----------------|-----|
| 3171 | 741 |
|----------------|-----|

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9
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12
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20
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24
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71 785

TRIAL EXHIBITS

| Exhibit No. | Received |
|----------------|----------|
| 2150 | 694 |
| 2151 | 695 |
| 2152 | 695 |
| 2153 | 696 |
| 2154 | 696 |
| 2155 | 696 |
| 3170 | 730 |
| 3497 | 797 |